

Sines, et al. v. Kessler, et al., 3:17CV72, 11/03/2021

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, ET AL., CIVIL CASE NO.: 3:17CV72
NOVEMBER 3, 2021, 8:59 AM
JURY TRIAL, DAY 8

Plaintiffs,

vs.

Before:

HONORABLE NORMAN K. MOON
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF VIRGINIA

JASON KESSLER, ET AL.,

Defendants.

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Sines, et al. v. Kessler, et al., 3:17CV72, 11/03/2021

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1 (Proceedings commenced, 8:59 a.m.)

2 THE COURT: Good morning. Call the case.

3 THE CLERK: Yes, Your Honor. This is Civil Action
4 Number 3:17-cv-00072, Elizabeth Sines and others versus Jason
5 Kessler and others.

6 THE COURT: Plaintiffs ready?

7 MS. KAPLAN: We are, Your Honor.

8 THE COURT: Defendants ready?

9 MR. KOLENICH: Yes, Your Honor.

10 MR. SMITH: Yes, Your Honor.

11 THE COURT: Before we begin, I will remind everyone
12 that under Standing Order 2020-12 and 2013-8, the Court's
13 prohibition against recording or broadcasting court proceedings
14 remains in force. Attorneys, parties, or their staff, and any
15 members of the public or press accessing this proceeding today,
16 may not record or broadcast it. That means no photography, no
17 using of any video or audio recording device, rebroadcasting,
18 livestreaming, or otherwise disseminating any live, recorded
19 video or audio of this proceeding.

20 I have a few housekeeping remarks I'm going to make
21 regarding some of the matters that have come up.

22 First, if any party wishes to utilize an exhibit,
23 theirs or opposing counsel's, on cross, please make sure you
24 have that document or file readily accessible on your computer
25 or device. Please also provide and state on the record the

1 exhibit number, for example, PX-300, or the relevant Bates
2 number, so all parties will be able to turn to the exhibit.

3 Second, to the extent a party wishes to utilize an
4 exhibit not previously admitted on direct examination, I note
5 that where discussions between the parties have taken place
6 beforehand, on several occasions they have appeared to reduce
7 potential areas in dispute and made cross-examinations run more
8 smoothly.

9 Third, a reminder for any counsel on Zoom who will be
10 examining a witness, or who wishes to make an objection, the
11 clerk has been allowing you access to take your microphone off
12 mute when you wish to ask a question or make an objection, and
13 you can always also message the clerk, Ms. Moody, to flag
14 something for her as well. She has been raising issues for my
15 attention as they come in from the parties, attorneys, on Zoom.
16 I believe that process has been going smooth, and counsel have
17 been able to cross and raise objections where they have them.

18 And fourth, there have been a number of exhibits,
19 audio or video, that have been admitted with respect to only
20 particular portions or time stamps of the videos. Currently
21 the whole videos are on the Box system for evidence. The clerk
22 cannot move the whole videos to the folder for files admitted
23 for use by the jury until the clerk gets edited portions.

24 In those instances, can counsel offering the limited
25 clip of the video submit to the clerk's office the following

1 morning an edited clip, limited to the portions of the video
2 that were admitted into evidence? And to make sure there is no
3 dispute about the portions of the edited video itself, counsel
4 should circulate the proposed edited video to opposing counsel
5 to confirm their agreement that the edited video captures the
6 portion to be admitted before sending it to the clerk's office.

7 Mr. Cantwell, IT is working on something to help you
8 out.

9 MR. CANTWELL: Thank you.

10 THE COURT: Okay. That's all I had.

11 MS. KAPLAN: Two very small matters, Your Honor.

12 Like Samantha Froelich's video that we showed
13 yesterday, we have videos ready for Defendants Hopper and
14 Kline. We understand that Defendant Hopper is also the subject
15 of the letter we submitted last night, and we'll await Your
16 Honor's instructions on that. But those are available as time
17 fillers today.

18 Also, we have a 45-minute or so presentation of
19 documentary evidence with respect to Defendant Ray. Defendant
20 Ray, as Your Honor I'm sure is aware, has not participated in
21 any way in this case. There's been no objection to those
22 exhibits and we'd like to present them, read portions of
23 them -- put them on the screen and read portions of them to the
24 jury.

25 THE COURT: Okay. I'm not sure I follow that.

1 Okay.

2 MR. KOLENICH: Judge, we -- we may have some
3 objections regarding Dillon Hopper, but they can wait until
4 later when plaintiffs try to put something in.

5 As far as Mr. Ray, it's true we didn't object to the
6 exhibits themselves because Ray is an unrepresented party, but
7 the contents of the exhibits we haven't fully reviewed yet. So
8 if it's all right, we could do that live while they're
9 presenting it or we could do that before they present it. I
10 don't know if she wants to do that to start. As far as I know,
11 Mr. Heimbach is still being examined. So we could do that
12 while we're in process.

13 MS. KAPLAN: On Ray, we sent them last week.
14 Hopefully you can look at them during Heimbach and maybe we can
15 reach agreement.

16 On Hopper, my wise colleague, Mr. Bloch, corrected
17 me. He's not a defendant in the case. He's not a party. He's
18 a representative of Vanguard America that is a party.

19 MR. KOLENICH: That raises a separate problem, Your
20 Honor. Vanguard America is an unrepresented corporate
21 defendant. They can't appear except through counsel. So we
22 may object to Mr. Hopper being called as a corporate witness
23 when they had no ability to designate a corporate witness, and
24 so forth; they have to appear through counsel. So if they have
25 evidence, documentary evidence or something like that, that's

1 one thing. But calling Hopper as a witness may be
2 objectionable and we may want to posit an objection at that
3 point.

4 MS. KAPLAN: Again, Your Honor, this was addressed in
5 our letter last night. The law is very clear that when someone
6 testifies in a deposition, as Mr. Hopper did, as either a
7 30(b)(6) designee or as an official head of an entity, which he
8 testified he was, that evidence, that testimony is admissible,
9 regardless of availability or any other reason.

10 THE COURT: Okay. You all have the letter from last
11 night?

12 MR. KOLENICH: I do have the letter. I haven't
13 reviewed it. It may well be they're correct and we would
14 concede the point.

15 THE COURT: We haven't completely worked that out.

16 MR. KOLENICH: Yes, Your Honor.

17 THE COURT: Call the jury.

18 Where is the witness now?

19 THE CLERK: Counsel agreed that Mr. ReBrook is going
20 next.

21 MR. KOLENICH: Sure.

22 THE CLERK: Mr. ReBrook will be next by phone.

23 THE COURT: Okay. Mr. Heimbach, you may come on
24 back.

25 **(Jury in, 9:07 a.m.)**

M. Heimbach - Cross

1 THE COURT: All right. You may be seated.

2 Good morning, ladies and gentlemen. I'm glad to see
3 you back this morning. We'll proceed with the
4 cross-examination of this witness. I think Mr. ReBrook, who is
5 on Zoom, will examine the witness next.

6 Do you have him?

7 THE CLERK: I do, and he's unmuted, but he's not
8 saying anything.

9 Mr. ReBrook, are you there?

10 THE COURT: If he's not there, let's pass him.

11 MR. REBROOK: Hello. This is Mr. ReBrook. Can you
12 hear me?

13 THE COURT: Yes. Go ahead.

14 MR. REBROOK: Are you ready for my cross-examination,
15 Judge?

16 THE COURT: Yes.

17 MR. REBROOK: Very well.

18 MATTHEW HEIMBACH, CALLED BY THE PLAINTIFFS,

19 PREVIOUSLY SWORN

20 CROSS-EXAMINATION

21 BY MR. REBROOK:

22 Q Good morning, Mr. Heimbach.

23 A Good morning, Mr. ReBrook.

24 Q I just have a few questions for you.

25 First, you mentioned that all the defendants were on the

M. Heimbach - Cross

1 Discord. Do you have any recollection of whether or not
2 Mr. Jeff Schoep was on the Discord?

3 A I do not believe Mr. Schoep was present on the Discord, to
4 the best of my knowledge.

5 Q There were some questions yesterday asking you about
6 wearing of clothes that concealed blood. I wanted to ask if
7 the intention was to conceal the blood of other persons or the
8 blood of the wearer of the clothing?

9 MS. DUNN: Objection, leading.

10 THE COURT: I don't think the question suggests the
11 answer. It gives him an option. Overruled.

12 THE WITNESS: That would be the wearers. We had
13 gotten used to being attacked by anti-fascists with weapons
14 over an extended period of time. So there was an understanding
15 projectiles being thrown or weapons being utilized against our
16 legally permitted rallies was unfortunately a norm.

17 THE COURT: I'm going to instruct the witness just to
18 answer the question. Don't do the anticipated follow-up.

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: He can ask you why if he wants to.

21 THE WITNESS: Yes.

22 THE COURT: But it goes much better. We take a lot
23 of time unscrambling this.

24 THE WITNESS: Yes, sir.

25 THE COURT: Go ahead.

M. Heimbach - Cross

1 BY MR. REBROOK:

2 Q And then my last question is: Yesterday you were quoted
3 as having quoted Adolf Hitler and a willingness to fight. Do
4 you recall that quotation?

5 A Yes.

6 Q Okay. Basically, I just want to understand if that -- if
7 that was figurative or literal.

8 A That would be figurative.

9 MR. REBROOK: I have no further questions. Thank
10 you.

11 THE COURT: Thank you. All right. Who's next?

12 CROSS-EXAMINATION

13 BY MR. JONES:

14 Q Good morning.

15 A Good morning, sir.

16 Q I represent Michael Hill, Michael Tubbs, and the League of
17 the South.

18 I'm going to start by asking you about
19 Charlottesville 1.0. If I say "Charlottesville 1.0," do you
20 know what I mean?

21 A Yes, sir.

22 Q I'm going to show you what's been admitted as Plaintiffs'
23 Exhibit 0939. I ask this to be published, please.

24 While we're waiting for it to load up, I'll start with a
25 few questions here.

M. Heimbach - Cross

1 What is this image?

2 A That was an image taken at what was known as
3 Charlottesville 1.0 with attendees and speakers.

4 Q Are Michael Hill or Michael Tubbs pictured in this image?

5 A No, sir.

6 Q Do you know whether they attended that rally?

7 A They did not.

8 Q You also mentioned a rally in Pikeville, Kentucky?

9 A Yes, sir.

10 Q Was that before the August 12th Charlottesville rally?

11 A Yes.

12 Q Did League of the South attend that rally?

13 A They did.

14 Q Do you know if Michael Hill and Michael Tubbs were there?

15 A Mr. Hill was there.

16 Q Okay.

17 A I believe Mr. Tubbs as well.

18 Q Do you know whether Antifa was there?

19 A Yes, numerous Antifa organizations were there.

20 Q And how are you able to identify somebody as being a
21 member of Antifa?

22 A Several different ways. As an example, in Pikeville, the
23 paramilitary Antifa militia Redneck Revolt was there. They
24 wear red bandannas as their signifying uniform. And generally
25 anti-fascists wear what they call black bloc, which is where

M. Heimbach - Cross

1 they wear all black so if they commit a violent act against
2 their political opposition, it's harder for police to identify
3 them.

4 Q If we could take that off the screen, I'm going to pull up
5 another. This I've marked as Defense 2. It will be offered
6 by -- just put it under Jones.

7 Can you see this picture?

8 A Yes, sir.

9 (Defendant LOS Exhibit 2 marked.)

10 BY MR. JONES:

11 Q Does that picture accurately represent the Antifa presence
12 at Pikeville?

13 A Some of them, yes.

14 MR. JONES: Your Honor, I'm going to move to
15 introduce this as Defense 2.

16 THE COURT: Did you -- I couldn't hear you.

17 MR. JONES: Your Honor, I'll move to introduce this
18 as Defense 2.

19 THE COURT: It will be admitted.

20 (Defendant LOS Exhibit 2 admitted.)

21 MR. JONES: Can we publish this to the jury?

22 THE COURT: You may.

23 BY MR. JONES:

24 Q So how are you able to identify Antifa supporters in this
25 image?

M. Heimbach - Cross

1 A The sign that they're holding glorifying the unprovoked
2 attack against Mr. Spencer would be one good indicator. Also
3 the red bandannas.

4 Q And can you tell whether Antifa is standing behind
5 anything?

6 A Yes. They're standing behind a police barricade.

7 Q Were police present in Pikeville?

8 A Yes.

9 Q Did the police take any actions to keep Antifa separated
10 from the protesters in Pikeville?

11 A Yes. Each side had their designated space, so where we
12 had our permitted rally, and there was a street, and then there
13 were barricades that the counter-demonstrators, the Antifa,
14 were behind. And there was a line of, I believe, Kentucky
15 State Troopers that were down the middle to ensure that
16 everyone stayed in their designated zones.

17 Q Did you attend Pikeville with other members of the
18 Nationalist Front?

19 A Yes.

20 Q And who were the other members of the Nationalist Front?

21 A At the time that would have been the Traditionalist Worker
22 Party, the League of the South, Vanguard America, and the
23 National Socialist Movement.

24 Q Do you know whether James Fields attended Pikeville?

25 A He did not.

M. Heimbach - Cross

1 MS. DUNN: Objection. Foundation.

2 THE COURT: Sustained. Well -- sustained. He has to
3 show his basis for his knowledge.

4 MS. DUNN: And move to strike the previous answer.

5 THE COURT: Strike it.

6 BY MR. JONES:

7 Q How many protesters with the Nationalist Front came to
8 Pikeville?

9 A I would say probably between 150 to 200, maybe.

10 Q Did you see James Fields among them?

11 A I did not.

12 MS. DUNN: Objection, Your Honor. Same basis.

13 THE COURT: Overruled.

14 BY MR. JONES:

15 Q Was anybody injured in a car attack in Pikeville?

16 A No one was injured in Pikeville.

17 Q I'm going to pull up what's been previously admitted as
18 Plaintiffs' Exhibit 3239.

19 Mr. Heimbach, can you see this video?

20 (Video playing.)

21 A Yes, sir.

22 Q What does this video depict?

23 A That depicts the entrance of the League of the South and
24 the Traditionalist Worker Party, among other folks, attempting
25 to enter the park.

M. Heimbach - Cross

1 Q Is this another angle of a video, similar series of events
2 that we saw yesterday?

3 A Yes, sir.

4 Q So what is currently depicted in this video?

5 (Video playing.)

6 A What is depicted is counter-demonstrators have blocked the
7 road and several of them have sticks in their hands.

8 MR. JONES: Ms. Wheeler, could we publish this to the
9 jury?

10 THE CLERK: I do not show this exhibit has been
11 admitted yet, Mr. Jones.

12 MR. JONES: Your Honor, I move to admit PX3239.

13 THE COURT: Be admitted.

14 (Plaintiffs' Exhibit 3239 admitted.)

15 MR. JONES: Now, I'm going to pull up a screenshot of
16 this that I marked as Defense 1. And I'm going to move to
17 introduce this screenshot as Defense 1 and request that it be
18 published.

19 THE COURT: Be admitted.

20 (Defendant LOS Exhibit 1 marked.)

21 (Defendant LOS Exhibit 1 admitted.)

22 BY MR. JONES:

23 Q Was this the group that you encountered as you walked down
24 Market Street towards Emancipation Park?

25 A Yes, sir.

M. Heimbach - Cross

1 Q If you can tell, is there any way around this group of
2 counter-protesters?

3 A No, sir.

4 Q Do you recognize any of the same Antifa clothing in this
5 group of protesters?

6 A Yes. Red bandannas.

7 Q Do you know whether the color red signals a certain
8 political ideology?

9 A Yes. As featured in the previous exhibit, one of the
10 signs that they held where they put red in a different color
11 for rednecks that were opposing us, that generally represents a
12 far left political perspective.

13 Q Would that be communism?

14 A Generally, yes.

15 MS. DUNN: Objection. Foundation.

16 MR. SMITH: Your Honor, it's his personal experience.
17 He's speaking to his personal experience.

18 THE COURT: As to this witness's state of mind, it's
19 not -- will not be accepted for the truth, but rather for this
20 gentleman's opinion and state of mind at the time.

21 BY MR. JONES:

22 Q I'm going to pull up what's been previously admitted as
23 Plaintiffs' Exhibit 3267.

24 Mr. Heimbach, can you see that?

25 A Yes, sir.

M. Heimbach - Cross

1 Q Can you see what I just circled on the screen?

2 A Yes, sir. It appears to be a flag of the Soviet Union.

3 Q What color is that flag?

4 A Red.

5 Q Is that the basis for your knowledge that red represents
6 the Communist Party of the Soviet Union?

7 A Among other things, yes.

8 Q There was some talk on Discord before the rally about
9 communists being at the park. Do you recall that?

10 A Yes, sir.

11 Q What did you mean by that?

12 A Communists, members of Marxist organizations or
13 anti-fascist organizations.

14 MS. DUNN: Objection, Your Honor. The exhibit that
15 was shown was somebody else's words, and the question to the
16 witness was "what did you mean?"

17 MR. JONES: I can ask him if he anticipated
18 communists being at the rally.

19 THE COURT: All right. I'm not following the
20 objection. I'm sorry.

21 BY MR. JONES:

22 Q Mr. Heimbach, there was some Discord -- I'll withdraw the
23 previous question.

24 As I previously said, there was some talk on Discord about
25 communists being at Charlottesville.

M. Heimbach - Cross

1 A Correct.

2 Q Did you anticipate communists being at the rally in
3 Charlottesville?

4 A Yes.

5 Q Did you -- if you know, did you see police intervening in
6 Charlottesville to prevent communist protesters from blocking
7 the street?

8 A They did not intervene.

9 Q I'm going to pull up what's previously been introduced as
10 PX0707.

11 On page 2 of this exhibit, at the bottom you made a
12 comment, "we're all doing it together"; is that right?

13 A Yes, sir.

14 Q When you made that comment, had you met James Fields?

15 A No.

16 Q Had you ever spoken to James Fields?

17 A No.

18 Q Did you know whether he was a member of any organization?

19 A No.

20 Q Did you know whether he would be in Charlottesville?

21 A No.

22 Q What were you referring to when you made that comment?

23 A Merely that a variety of organizations would be going as
24 attendees to a legally permitted rally.

25 Q Were you referencing the rally? "We're all doing it

M. Heimbach - Cross

1 together." Was "it" referring to the rally?

2 A Yes.

3 Q And when did the rally end?

4 A When the governor ordered a state of emergency.

5 Q And do you recall where you were when James Fields's car
6 attack occurred?

7 A I was either on the way to a rented cabin or already in a
8 rented cabin outside of Charlottesville.

9 Q You were not with James Fields at the time of the car
10 attack?

11 A No, sir.

12 Q Do you know who Samantha Froelich is?

13 A Now I do.

14 Q When you say now you do, what do you mean?

15 A Due to her testimony earlier in the case.

16 Q Did you know who she was before her deposition was played
17 in this case?

18 A I don't believe so.

19 Q Have you ever met her before?

20 A I might have seen her at the first Charlottesville event,
21 but I don't believe I have ever spoken to her.

22 Q Do you know whether anybody in the Traditionalist Worker
23 Party knows her?

24 MS. DUNN: Objection, Your Honor.

25 MR. SMITH: Well, if he knows, Your Honor.

M. Heimbach - Cross

1 MS. DUNN: Objection. Foundation.

2 THE COURT: Sustain the objection. You're asking
3 whether he knows whether anyone else knows.

4 MR. SMITH: Oh, sorry. You're right.

5 THE COURT: I don't see how he could possibly have
6 that knowledge.

7 MR. JONES: Well, I just -- if he doesn't, he can say
8 he doesn't --

9 THE COURT: Well, I know, but it allows him to state
10 a fact that he could not possibly know.

11 MR. JONES: Okay. Thank you.

12 BY MR. JONES:

13 Q I'm going to now pull up what was previously admitted as
14 PX2260.

15 Mr. Heimbach, can you see what's on the screen?

16 A Yes, sir.

17 Q This is the post, I believe it's a Twitter post. It says,
18 "In memory of plowing through a human wall of communists." Do
19 you see that?

20 A Yes, sir.

21 Q Is there any mention of race in this post?

22 A Not at all.

23 Q Do you consider communism to be a race?

24 A No. That would be a political ideology.

25 Q So a reference to plowing through a human wall of

M. Heimbach - Cross

1 communists would be referencing politically motivated action,
2 not racially motivated action, correct?

3 MS. DUNN: Objection, leading.

4 THE COURT: Sustained.

5 BY MR. JONES:

6 Q I'm going to pull up PX0583. This was the Discord
7 conversation where somebody named Heinz referenced a shield
8 wall. Do you recall that?

9 A Yes, sir.

10 Q Why -- did you believe it was important to have shields?
11 Did you believe it was important to have shields at
12 Charlottesville?

13 A Yes.

14 Q Why was that?

15 A Specifically due to the ongoing examples of violence by
16 Antifa against not only ourselves, but by the summer of 2017,
17 against even Trump supporters at rallies and normal, everyday
18 folks that they disagreed with, even free speech events on
19 college campuses. Antifa had a long track record of being
20 violent against people that they wanted to shut down. So we
21 feared that they would once again try to attack us for
22 exercising our First Amendment rights.

23 Q I'm going to pull up what's marked as Plaintiffs' Exhibit
24 2702. I don't believe this has been previously admitted.

25 (Plaintiffs' Exhibit 2702 marked.)

M. Heimbach - Cross

1 (Video playing.)

2 BY MR. JONES:

3 Q Do you recognize what this video shows?

4 A It looks to be on the outside of Emancipation Park.

5 MR. JONES: And for the record, this is Exhibit 2702.

6 I'm going to move to introduce just the portion starting at

7 3:08, and going to 3:13.

8 MS. DUNN: Objection, Your Honor. Foundation. The
9 witness did not see this himself, and he actually says this
10 looks to be outside Emancipation Park.

11 MR. JONES: Your Honor, this has been filed in the
12 case and Your Honor has repeatedly held that videos of the case
13 that have been filed can be admitted.

14 THE COURT: What's your question concerning it?

15 MR. JONES: Well, I'm going to play it for him. Let
16 me ask the question and then I'll move to admit it.

17 BY MR. JONES:

18 Q Can you see what's displayed on the screen?

19 A Yes, sir.

20 (Video playing.)

21 Q What do you see there on the screen?

22 A It appears to be a Antifa --

23 MS. DUNN: Your Honor, objection. There's no
24 foundation for this. This is not -- he has not identified
25 himself or that he was there.

M. Heimbach - Cross

1 MR. JONES: Your Honor, I made a foundation objection
2 yesterday to a video and Your Honor admitted it because it had
3 been filed and there had been no objections.

4 THE COURT: The video is admitted. He can play it.
5 But the video speaks for itself, and unless he knows --

6 MS. DUNN: Your Honor --

7 THE COURT: I don't know how he knows -- if he can
8 explain why he knows something in the video, it's okay.

9 MR. JONES: Your Honor, this is plaintiffs' exhibit.

10 THE COURT: Okay. I know. You can play it for him.
11 But the question is: How does he know who's throwing what?

12 MR. JONES: I'm not asking him if he knows the
13 person. I'm just asking --

14 THE COURT: He doesn't have to know. But he's
15 already said that the person was from a particular viewpoint or
16 organization. And that's --

17 MR. JONES: I'll ask him to explain how he knows
18 that.

19 THE COURT: Well, that's what you have to --

20 MS. DUNN: Your Honor, we object. This is not an
21 admitted exhibit, and we'd ask that the witness testify to what
22 he personally saw --

23 THE COURT: Has this video not been admitted?

24 MS. DUNN: No.

25 THE COURT: Well, it's been filed. There's no --

M. Heimbach - Cross

1 it's authentic, right?

2 MR. JONES: It's been filed by plaintiffs, Your
3 Honor. There's no objection previously made to it. It's the
4 same basis that videos were introduced yesterday.

5 MS. DUNN: We do object to this exhibit, and there is
6 no foundation. The witness has to be testifying and provide
7 personal foundation.

8 THE COURT: If you all have admitted the -- if --
9 it's filed without objection. I think you filed it, right?

10 MR. JONES: That's correct.

11 THE COURT: Is that what you're saying, the plaintiff
12 filed it?

13 MR. JONES: That's correct. It's PX, Plaintiffs'
14 Exhibit 2702.

15 MS. DUNN: Your Honor, our understanding was not that
16 exhibits would come in without foundation.

17 THE COURT: You mean you have to lay a foundation in
18 every exhibit you plan -- you haven't been doing this, have
19 you?

20 MS. DUNN: Yes, Your Honor. For this --

21 MR. JONES: No, Your Honor. Yesterday --

22 THE COURT: Look, okay, the exhibit can be played.
23 The question is the propriety of what questions he's going to
24 be asked, because he didn't take it. So he can identify anyone
25 he knows or tell us anything about any person.

M. Heimbach - Cross

1 MR. JONES: So --

2 THE COURT: He doesn't have to know the person, but
3 if he's going to say anything about the person depicted in the
4 film, he's going to have to have a foundation for his
5 knowledge.

6 BY MR. JONES:

7 Q Mr. Heimbach, were you at Emancipation Park on August
8 12th --

9 A I was.

10 Q -- 2017?

11 A I'm sorry. Yes.

12 Q And were you inside the park?

13 A At certain points, and on the outskirts at other points.

14 Q Did you see any counter-protesters at -- in
15 Charlottesville on August 12th?

16 A Yes.

17 Q And generally speaking, where were the counter-protesters
18 located?

19 A On the streets, often attempting to try to force their way
20 into the park.

21 Q I'm showing you this picture. Do you recognize this as a
22 street outside Emancipation Park?

23 A Yes.

24 Q And do you recognize the clothing worn by some of the
25 people in this picture?

M. Heimbach - Cross

1 A Yes. There appears to be an individual holding a club
2 with a red bandanna around his neck, and a masked individual
3 with sunglasses in front of him.

4 Q What clothing would you identify that person as far as
5 whether they were a protester or a counter-protester?

6 MS. DUNN: Objection, Your Honor. Your Honor said he
7 has to identify something from his personal knowledge, not just
8 describe what any person might describe. He's not a --

9 THE COURT: The jury can decide -- will decide who
10 was there. He can testify as to what he observes of his
11 knowledge that's in the photograph. It will be up to the jury
12 to decide ultimately what is there. Go ahead.

13 BY MR. JONES:

14 Q What's the person in the white tank top doing?

15 A Throwing a projectile. And as to your earlier question
16 about outfits, generally anti-fascists would work to obscure
17 their faces to avoid prosecution potentially for violent acts
18 they committed. So it would be likely that this would be a
19 counter-protester due to the fact he was not only wearing
20 sunglasses but obscuring his face while committing a violent
21 act.

22 Q Which direction was he throwing the projectile, if you can
23 tell from your personal knowledge?

24 A It appears based on the video he is throwing it at the
25 legally permitted Unite the Right demonstrators.

M. Heimbach - Cross

1 THE COURT: Look. Strike that.

2 MS. DUNN: Your Honor --

3 THE COURT: In his answer, he may not editorialize.

4 MR. JONES: That's fine. That's fine.

5 THE COURT: I mean, go to the exhibit, if you want to
6 put it in, but he just cannot editorialize and characterize
7 what's going on. The jury can see.

8 MR. JONES: Your Honor, I'm going to move to admit
9 and ask to be published to the jury Plaintiffs' Exhibit 2702
10 from the 3:08 mark to the 3:13 mark.

11 MS. DUNN: Your Honor, just procedurally, by the
12 logic here, the entire Discord server of Charlottesville 2.0
13 would come in, even if there was not a percipient witness that
14 participated in the exchanges or could testify to firsthand
15 knowledge. And so we don't think there's foundation to this.
16 This individual is just describing what he thinks he sees on a
17 screen.

18 THE COURT: Well, so far I've only ruled now that it
19 can come -- that he can play the exhibit --

20 MS. DUNN: Right. But --

21 THE COURT: -- with limited questions.

22 MS. DUNN: We do not think this is properly -- can be
23 properly admitted into evidence with no percipient witness and
24 no foundation. And we just want to be clear because, if this
25 comes in with no percipient witness, no factual basis, doesn't

M. Heimbach - Cross

1 identify himself, wasn't there, then anything on the exhibit
2 list without foundation would likewise come in. And we'd like
3 to discuss that, if that is how we're going to proceed.

4 MR. JONES: I don't know. Are they contesting the
5 authenticity of this video?

6 MS. DUNN: Your Honor --

7 MR. JONES: It's going to go on forever if every
8 video of Charlottesville that's been filed -- I mean --

9 THE COURT: All right. You may play the video.
10 Overrule the objection, but it's not precedent to anything
11 else. I mean, these videos, unless you've got some evidence
12 that this is fraudulent or -- I mean, we've played parts of all
13 these videos that were taken. I take it you -- it was at the
14 rally.

15 MS. DUNN: Your Honor, that's insufficient because,
16 without a witness to testify to firsthand knowledge of the
17 video, there is not foundation for its admission or for the
18 testimony. So, you know, we did show Mr. Heimbach exhibits
19 that he participated in or where he could recognize people in
20 the video or himself in the video, or the text or the Discord
21 post. We were very careful about that. So I think that we're
22 going to have a problem if both parties here are allowed to
23 just show videos and have witnesses without firsthand knowledge
24 talk about them and describe them and admit them. I think it
25 will change the entire --

M. Heimbach - Cross

1 MR. JONES: We're fine to play every video of every
2 minute of the rally --

3 THE COURT: Wait, wait, wait.

4 MS. DUNN: I think it will change the entire
5 character of this trial.

6 THE COURT: What have you got to say?

7 MR. JONES: I said, we're fine for every minute of
8 the rally to be played by video.

9 THE COURT: You what?

10 MR. SMITH: Agreed.

11 MR. SPENCER: Agreed.

12 MR. CANTWELL: Agreed.

13 MR. JONES: We're fine for every minute of the rally,
14 every video to be played to the jury.

15 MR. SMITH: The more the merrier, Your Honor.

16 MR. JONES: They're the ones trying to keep out the
17 video of the rally.

18 MS. DUNN: Your Honor, this is posturing. It will
19 change the entire character of this trial if every witness can
20 testify to anything that they didn't personally see or
21 experience. That's just -- it's just not --

22 THE COURT: Without comment, I'm going to let you
23 play this video.

24 MR. SMITH: Thank you, Your Honor.

25 (Plaintiffs' Exhibit 2702 admitted.)

M. Heimbach - Cross

1 BY MR. JONES:

2 Q Did you -- at the rally, were you struck by any
3 projectiles?

4 A Not myself personally. I was struck in the head with a
5 bat or a flagpole, though.

6 Q Do you know through your personal knowledge, personal
7 observations, whether any members of TWP were struck with
8 projectiles?

9 A Yes.

10 Q What types of projectiles were they struck with at the
11 rally?

12 A Stones. Frozen water bottles.

13 Q I'm going to show you what's been admitted as Plaintiffs'
14 Exhibit 0615.

15 Do you recall seeing this yesterday during your testimony?

16 A I do.

17 Q Plaintiffs' counsel asked you about what appears to be
18 nails on that; is that right?

19 A Yes, sir.

20 Q Have you been deposed in this case?

21 A Yes, sir.

22 Q One time or more than one time?

23 A Twice.

24 Q And approximately how long were each of those depositions?

25 A The entire day. So multiple hours.

M. Heimbach - Cross

1 Q Each of them approximately eight hours?

2 A I believe so.

3 Q Approximately 16 hours total?

4 A That would sound accurate.

5 Q And so far in this trial you've testified for almost a
6 full day; is that right?

7 A Yes, sir.

8 Q During your depositions and during trial, plaintiffs have
9 shown you pictures and videos from the rally; is that right?

10 A Correct.

11 Q Have they showed you a single picture or video of that
12 shield being used at the rally?

13 A No, sir.

14 Q I'm going to pull up PX2722.

15 MR. JONES: Ms. Wheeler, has this been introduced
16 already?

17 THE CLERK: I'm trying to look.

18 MR. JONES: It looks to be the video of Mr. Heimbach
19 walking down Market Street.

20 THE CLERK: I am not finding 2722.

21 MR. JONES: Thank you.

22 (Plaintiffs' Exhibit 2722 marked.)

23 BY MR. JONES:

24 Q Mr. Heimbach, do you recognize what's being shown to you
25 on the screen?

M. Heimbach - Cross

1 A Yes, sir.

2 Q Who is that?

3 A Myself.

4 Q What are you doing?

5 A Walking down the street and speaking to a reporter.

6 MR. JONES: Your Honor, I'm going to move to
7 introduce what's been marked as Plaintiffs' Exhibit 2722.

8 THE COURT: It will be admitted.

9 (Plaintiffs' Exhibit 2722 admitted.)

10 MS. DUNN: Your Honor, this is a 7-minute video.
11 We'd just like to know which portion of the video counsel plans
12 to introduce.

13 MR. JONES: Go to the 4:42 mark of the video.

14 THE CLERK: I'm sorry. What was it, Mr. Jones?

15 MR. JONES: 4:42 mark of the video.

16 THE CLERK: Thank you.

17 BY MR. JONES:

18 Q Do you recognize what this is, Mr. Heimbach?

19 A Yes, sir.

20 Q What is it?

21 A It is the street outside of Emancipation Park.

22 (Video playing.)

23 Q Did you see that, Mr. Heimbach?

24 A Yes, sir.

25 Q What was that?

M. Heimbach - Cross

1 A It appears to be a tear gas canister being flung by Antifa
2 at us. By "us" I mean the Unite the Right attendees.

3 Q I'm going to go to the 5:27 mark of this video.

4 (Video playing.)

5 Mr. Heimbach, do you see that?

6 A Yes, sir.

7 Q Are those Traditionalist Worker Party members?

8 A No, sir.

9 Q What are they wearing on their heads?

10 A Black helmets.

11 Q What do they have in their hands?

12 A Clear shields.

13 Q Can you tell whether they have anything protecting their
14 eyes?

15 A Yes; face masks, it looks like.

16 Q Mr. Heimbach, did you conspire -- so who are these people?

17 A I believe they're Virginia State Police.

18 Q Did you conspire with the Virginia State Police to wear
19 helmets to Charlottesville?

20 A No, sir.

21 Q Did you conspire with the Virginia State Police to bring
22 shields to Charlottesville?

23 A No, sir.

24 Q What type of formation are they standing in?

25 A They're standing in a straight line, a shield wall.

M. Heimbach - Cross

1 Q Was this the type of shield wall that you referenced?

2 A Yes, sir.

3 Q Did you conspire with the Virginia State Police to wear
4 protective covering over your eyes or TWP members' eyes?

5 A No, sir.

6 Q So based on the police officers in this image wearing
7 helmets, holding shields, standing in a shield wall, are they
8 part of a conspiracy to commit racially motivated violence?

9 A No, sir.

10 MS. DUNN: Objection, Your Honor.

11 THE COURT: Sustained.

12 MR. JONES: Thank you. That's all the questions I
13 have.

14 CROSS-EXAMINATION

15 BY MR. CANTWELL:

16 Q Hello, Matthew.

17 A Hey, Chris.

18 Q At the time you were questioned by plaintiffs' counsel
19 yesterday, were you in any position whatsoever to comment on
20 the accuracy of my opening statement?

21 A No, sir.

22 Q Do you know the name of my youngest brother?

23 A No, sir.

24 Q Do you know how many sisters I have?

25 A I do not.

M. Heimbach - Cross

1 Q Do you know whether or not my parents are still married?

2 MS. DUNN: Objection, Your Honor, relevance.

3 MR. SMITH: Your Honor, this goes to whether he
4 knows --

5 THE COURT: Overruled. Overruled. Go ahead.

6 THE WITNESS: No.

7 BY MR. CANTWELL:

8 Q Describe to the jury what role, if any, I played in the
9 Traditionalist Worker Party.

10 A Zero.

11 Q If I were a member of any other organization that
12 comprised the Nationalist Front, would you be in a position to
13 know that?

14 A I believe I would have a good idea.

15 Q Please describe for the jury what knowledge you have of my
16 position in any organization that comprised the Nationalist
17 Front.

18 A None.

19 Q Did you describe your plans for August 12th as totally
20 separate from -- I believe you described your plan as totally
21 separate for August 12th. What was your plan totally separate
22 from?

23 A Any other organizers. We were merely attendees.

24 Q Please describe for the jury what role, if any, I played
25 in what you described as your totally separate plan for

M. Heimbach - Cross

1 August 12th.

2 A There was no point of contact.

3 Q Are you, as of today, aware of a so-called leadership
4 meeting which occurred at McIntire Park on August 11th?

5 A I believe, based on documents that have been submitted, I
6 know that meeting happened, but I wasn't there.

7 Q When did you become aware of that meeting?

8 A I believe based on evidence that was submitted in this
9 case, so after the fact.

10 Q Please describe what role, if any, you played in that
11 leadership meeting on August 11th.

12 A Zero. I wasn't there.

13 Q Do you recall the SMS conversation between us which was
14 Plaintiffs' Exhibit 3317?

15 A Yes.

16 Q And in the second message, you may recall that I say:
17 "This is Cantwell, BTW."

18 To the best of your knowledge, is "BTW" some kind of Nazi
19 code word?

20 A No. I believe it means "by the way."

21 Q And that message -- do you remember the date on which that
22 message was sent?

23 A Not specifically.

24 Q Was it close to the events in question?

25 A That would sound accurate.

M. Heimbach - Cross

1 Q And if I had not told you the text was from me, would you
2 have known that it was from me?

3 A No.

4 Q Do you recall a later message in that exchange in which I
5 suggested an app called Signal?

6 A Yes.

7 Q And did you at some point begin using that application?

8 A Yes.

9 Q When was that?

10 A I believe it was after the events of August 11th and 12th.

11 Q And since that time, have you become familiar with the
12 user interface of that application?

13 A Somewhat.

14 Q In your experience, does Signal delete messages without
15 the user specifically activating that feature?

16 A No, I don't believe it's an auto setting.

17 Q Do you know the name of that feature in the app?

18 A Not off the top of my head.

19 Q Have you and I ever used that feature?

20 A No.

21 Q During the month of August 2017, did you use that feature
22 with any defendant in this case?

23 A I don't believe so.

24 Q Did you attend the event now commonly referred to as
25 Charlottesville 1.0?

M. Heimbach - Cross

1 A Yes.

2 Q Could you tell me approximately when you first became
3 aware of planning for that event?

4 A It would have been close to the event. I wasn't involved
5 in the planning or organizing of it. I was merely invited as
6 an attendee.

7 Q And when did the event actually transpire?

8 A In May of 2017.

9 Q May.

10 Was this event publicly promoted in advance?

11 A No.

12 Q Were you confronted by any sort of resistance at this
13 event?

14 A Not any organized or violent resistance.

15 Q Did you go looking for any?

16 A No, sir.

17 Q Did any violence transpire at the C'ville 1.0 event?

18 A No, sir.

19 Q If somebody were to review promotional material, media
20 that came out of the Charlottesville 1.0 event, what sort of
21 impression might they have gotten about that event?

22 A That it was a positive, peaceful event focused on
23 maintaining historical statues.

24 Q What did you think about the aesthetic of the torches?

25 A I thought that it was very powerful.

M. Heimbach - Cross

1 Q Describe for the jury what role, if any, I played in
2 Charlottesville 1.0.

3 A None.

4 Q Were you profoundly disappointed by my absence?

5 A I wouldn't say so.

6 Q Was anybody that you knew of profoundly disappointed by my
7 absence?

8 A No.

9 MS. DUNN: Objection, Your Honor, to the form of the
10 last question.

11 THE COURT: Leading. So sustained.

12 BY MR. CANTWELL:

13 Q Okay. Do you recall the first time we met?

14 A Yes.

15 Q When was that?

16 A It was at a pub after a speech by Mr. Spencer at Auburn
17 University, I believe.

18 Q And at that speech at Auburn University, were you inside
19 during Mr. Spencer's speech?

20 A Yes.

21 Q To the best of your knowledge, was I inside during
22 Mr. Spencer's speech?

23 A I don't recall seeing you.

24 Q Okay. Do you recall seeing me outside?

25 A No.

M. Heimbach - Cross

1 Q Outside of the event, do you recall seeing any opposition?

2 A Yes. There were Antifa there.

3 Q Do you recall a police presence at the Auburn event?

4 A Yes.

5 Q Are you aware of any injuries that occurred at the Auburn
6 event?

7 A A Traditionalist Worker Party affiliate had his jaw broken
8 trying to go to his car.

9 Q Are you aware of any counter-protesters that were -- any
10 opposition to the Spencer event that was injured at that event?

11 A I don't believe so.

12 MS. DUNN: Objection, Your Honor. Form and
13 foundation.

14 THE COURT: Well, he was asked was he aware. And so
15 I think -- overruled.

16 BY MR. CANTWELL:

17 Q When we met at this pub afterwards, do you recall if I had
18 any travel companions with me?

19 A I'm not sure.

20 Q When was the next time you and I met?

21 A That would have been the rally in Pikeville, Kentucky, I
22 believe.

23 Q Now, at the event in Pikeville, Kentucky, the plaintiffs
24 during your examination yesterday referenced the warm
25 introduction you gave me before the audience, which included a

M. Heimbach - Cross

1 favorable assessment of my character.

2 Could you please tell us, on what information did you base
3 that assessment?

4 A We had a friendly conversation at Auburn and you had a
5 very popular podcast.

6 Q During your questioning yesterday you were asked about the
7 substance of that introduction, and you said something to the
8 effect of that I stood up for the truth and was willing to
9 sacrifice for it.

10 What were you referencing in that?

11 A Specifically being a pro-white advocate, the loss of
12 income, the deplatforming, the threat of physical violence
13 against you. So being willing to stand up and speak your mind,
14 there's inherent risks and financial damages levied against you
15 merely for saying a protected legal opinion.

16 Q If I were a liar, would you have a lower opinion of me?

17 A I would.

18 Q Other than me, which other of our co-defendants in this
19 case were present at the event in Pikeville, Kentucky?

20 A The League of the South and its associated leadership, the
21 National Socialist Movement and Mr. Jeff Schoep, Matt Parrott.

22 Q Please describe in as much detail as you can every
23 interaction that you witnessed between me and Jeff Schoep.

24 A I can't recall any of them.

25 Q Same question for Michael Hill.

M. Heimbach - Cross

1 A Don't even know if you guys spoke.

2 Q Same question for Michael Tubbs.

3 A Same answer. I don't even know if you guys spoke.

4 Q Same question for Matthew Parrott.

5 A You might have said hello to each other.

6 Q Matt, if you heard me tell somebody that I barely knew my
7 co-defendants on August 11th, 2017, would I lose your respect?

8 A No.

9 MS. DUNN: Objection, Your Honor, form.

10 THE COURT: Sustained.

11 BY MR. CANTWELL:

12 Q Was there any violence at the Pikeville rally?

13 A No.

14 Q Do you recall at any time -- withdrawn.

15 When Mr. Jones was questioning you, you described that
16 there was barriers on either side of the street, correct?

17 A Correct.

18 Q At any time, did anybody associated with the
19 Traditionalist Worker Party attempt to cross those barriers?

20 A Not to the best of my knowledge.

21 Q Did anybody on the other side of the street try to cross
22 those barriers?

23 A Not --

24 MS. DUNN: Objection, Your Honor, foundation.

25 BY MR. CANTWELL:

M. Heimbach - Cross

1 Q Did you witness anybody on the other side of those
2 barriers try to cross those barriers?

3 A Everyone stayed in their space.

4 Q Okay. At the Pikeville event, you and I both gave
5 speeches which ended up on the Internet. Were you aware of the
6 cameras?

7 A Yes.

8 Q Did you expect that the behavior captured on those cameras
9 would become public?

10 A Yes.

11 Q If you had to categorize the behavior and words caught on
12 camera as front-stage or backstage behavior, which would you
13 categorize them as?

14 MS. DUNN: Objection, Your Honor.

15 THE COURT: Overruled.

16 THE WITNESS: Front-stage.

17 BY MR. CANTWELL:

18 Q And during this decidedly front-stage display, did you
19 honestly express how you felt at that time about Jewish people?

20 MS. DUNN: Objection, Your Honor, leading.

21 THE COURT: Overruled. It doesn't suggest the
22 answer.

23 MR. SMITH: I don't think that's leading, Your Honor.

24 THE COURT: Go ahead, sir.

25 THE WITNESS: I don't remember everything I said

M. Heimbach - Cross

1 about that speech, but yes, everything I said, I believe would
2 be accurate.

3 BY MR. CANTWELL:

4 Q To the best of your recollection, was anybody laughing
5 when you described those views?

6 A Not to my knowledge.

7 Q When you described those views, did you express a desire
8 to exterminate Jewish people?

9 A I don't believe I said anything like that.

10 Q Other times, when you did make genocidal remarks about the
11 Jews, if you did, did people in your company laugh?

12 A Generally.

13 Q What's your favorite Holocaust joke?

14 A My favorite?

15 Q I'll withdraw it.

16 In your leadership role with the Traditionalist Worker
17 Party, were you at all concerned with how the public perceived
18 your organization?

19 A No. I believe we had a very strong, powerful message.

20 Q To clarify, did you desire to have a strong, powerful
21 message?

22 A Yes. To advocate for working families.

23 Q And did you desire to be perceived in such a way?

24 A Yes.

25 Q Okay. So you cared about how you were perceived?

M. Heimbach - Cross

1 A Yes.

2 Q Okay. Could this concern be described as optics?

3 A Basic political consideration, but sure.

4 Q Are you aware of any other political organizations or
5 movements that care about how they're perceived by the public?

6 A Literally every political movement that there is.

7 Q Would it be a shorter list to describe movements that
8 don't care about how they're perceived by the public?

9 A That would be accurate.

10 Q Okay. Yesterday plaintiffs' counsel asked you if the "OK"
11 hand symbol was -- and I'm paraphrasing -- some kind of white
12 supremacist dog whistle, and you seemed to find this line of
13 questioning amusing. Could you describe what you found so
14 humorous about this inquiry?

15 A Sure. Well, it all -- the usage of that symbol began as a
16 joke, I believe, on one of the so-called chan websites, the
17 idea of: What's the most outrageous thing that could be
18 presented to make the media and the organized leftist community
19 freak out and write endless articles and have all sorts of
20 opinions? And the usage of "OK" is a normal symbol that is
21 utilized by schoolchildren to old folks. So that was viewed as
22 a joke to, essentially, troll and bait the media, and they
23 absolutely fell for it.

24 Q You used the word -- the phrase "the chans." Now, is this
25 a reference to -- can you be more specific about what you mean

M. Heimbach - Cross

1 by "the chans," please?

2 A Sure. Websites such as 4chan, which are very popular with
3 teenagers.

4 Q Was there another chans site?

5 A There is 8chan.

6 Q 4chan, 8chan, 12chan, 16 --

7 A All the chans.

8 Q Withdrawn.

9 So 4chan is a website -- are the people on 4chan easily
10 identified?

11 A No.

12 Q And have 4chan pranks made the news a couple of times?

13 A Yes.

14 Q Is there any particular reason -- withdrawn.

15 Do you recall a similar interaction with plaintiffs'
16 counsel regarding the word "globalist"?

17 A Yes.

18 Q Are you using words like "globalist" or using things like
19 the "OK" hand symbol because you're afraid of being called a
20 racist?

21 A No.

22 Q Yesterday you used the term "Rockwell pivot." Could you
23 please describe to the jury what you mean by this?

24 A Yes. One of the most important things to understand in
25 politics is, if a tree falls in the forest and no one hears it,

M. Heimbach - Cross

1 did it really happen?

2 So going back to the 1960s, World War II veteran commander
3 George Lincoln Rockwell wanted to advocate for white Americans,
4 but realized into one was coming to listen to hear his
5 organizing, so he created the American Nazi Party, which he
6 knew would be inflammatory and get the media there, and they
7 often would do stunts that would get media attention, at which
8 point he would follow that up with well-reasoned, thoughtful
9 arguments to advocate for white Americans.

10 So for ourselves, we refer to it as "the Rockwell pivot,"
11 that being controversial and having jokes was a way that --
12 that gets the media there, no controversy, no cameras, and then
13 we could talk about things like job programs, the opioid
14 epidemic, housing, healthcare, and the issues we substantively
15 cared about and were fighting for.

16 Q Did you just tell us that a World War II veteran started
17 the American Nazi Party?

18 MS. DUNN: Objection, Your Honor. Objection.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, and a large number of his
21 membership were World War II veterans.

22 BY MR. CANTWELL:

23 Q Are you familiar with the phrase "agree and amplify"?

24 A Yes.

25 Q Could you please describe for the jury your understanding

M. Heimbach - Cross

1 of that phrase?

2 A Sure. Well, you constantly have to be able to politically
3 take a position, and then you kind of bring it up a little bit
4 to then be able to promote your specific position.

5 Q You described the "okay" hand symbol as being a means of
6 trolling the media.

7 A Absolutely.

8 Q And did "agree and amplify" have anything to do with the
9 media?

10 A Yes. Again, controversy brings cameras.

11 Q Mr. Heimbach, based on what you know about jails and
12 prisons, do you think you'd like to spend a whole lot of time
13 in one?

14 A No.

15 Q Okay. During the events in dispute, did you at any time
16 hide your face from the cameras?

17 A No. We had reporters embedded with us actively.

18 Q You were actively embedded with reporters?

19 A Yes.

20 Q Do you -- is it your experience with the media,
21 Mr. Heimbach, that they're particularly sympathetic to our
22 views?

23 A They are absolutely hostile.

24 Q Mr. Heimbach, if you were to commit some kind of crime in
25 front of a press camera, do you think that they'd help you

M. Heimbach - Cross

1 cover it up?

2 A Not at all.

3 Q Okay. Have you ever heard the phrase "nationalism for all
4 peoples"?

5 A Yes, I've said it myself.

6 Q Could you please describe to the jury what your
7 understanding of that phrase is?

8 A It's the idea that every group of people has a right to
9 their own ethnic identity, their own culture, and they have a
10 right to their own nation. And that sentiment is in accordance
11 with the United Nations international law.

12 Q Have you heard of Woodrow Wilson's -- is it 13 or 14
13 points? Do you know what I'm talking about?

14 A Yes, proposed after World War I.

15 Q Can you relate that to the "nationalism for all peoples"
16 phrase?

17 A Yes. At the time the American president suggested that
18 every group of people had a right to self-determination in
19 their own respective homelands. And the empires that were
20 forced on people, the Austro-Hungarian Empire, the Ottoman
21 Empire, etc. were fundamentally against the sovereignty of
22 individual people. So the American government supported the
23 idea that every group of people should be able to control their
24 own destiny.

25 Q Are you familiar with the name Marcus Garvey?

M. Heimbach - Cross

1 A Yes.

2 Q How about Malcolm X?

3 A Yes.

4 Q What do these two men have in common?

5 MS. DUNN: Objection, Your Honor.

6 BY MR. CANTWELL:

7 Q What do you understand these two men to have in common?

8 THE COURT: Where are you going with this?

9 MR. CANTWELL: The Marcus Garvey and Malcolm -- I
10 don't want to give the answer to the witness.

11 THE COURT: What are you trying to prove?

12 MR. CANTWELL: May we approach? I think I'd be
13 leading the witness if I were to tell you in this way.

14 THE COURT: Well, go ahead. Just tell me.

15 MR. CANTWELL: Marcus Garvey and Malcolm X are black
16 nationalists. It's my understanding that the --

17 THE COURT: All right. You're going to show a lot of
18 background. The plaintiff intends to show background of these
19 pro-right organizations. If it has anything to do with the
20 establishment of your ideology or so forth, you may proceed.

21 MR. CANTWELL: It is an ideological question I'm
22 asking Mr. Heimbach.

23 BY MR. CANTWELL:

24 Q So at the risk of getting repetitive, Matt, could you
25 describe for the jury what, if anything, you -- what you

M. Heimbach - Cross

1 believe these two men have in common?

2 A Yes. Marcus Garvey, Malcolm X, Elijah Muhammad and
3 numerous other black organizers throughout our history have
4 supported the creation of their own nation-state run for and by
5 black people.

6 Q Could you describe for the jury what if anything you
7 admire about these men?

8 A They were advocates for their community and they wanted to
9 exercise self-determination. That's why consistently myself
10 and the Traditionalist Worker Party has been supportive of any
11 ethnic group that wants to exercise self-determination.

12 Q Yesterday there was some discussion about -- and I'm
13 probably going to mispronounce this -- I think the term was
14 White Juche?

15 A Yes.

16 Q Am I saying that right?

17 A Yes, sir.

18 Q Could you spell that, please?

19 A Juche is J-U-C-H-E.

20 Q I was so close.

21 Okay. Could you briefly describe what the origin of that
22 phrase is?

23 A Yes. It's a Korean phrase. The concept of Juche was
24 created by Kim Il-Sung, the first leader of the Democratic
25 People's Republic of Korea, also known as North Korea. And

M. Heimbach - Cross

1 it's the Korean sentiment of self-reliance, that the Korean
2 people, after facing a horrific war where the United States
3 dropped more bombs on North Korea in terms of tonnage than we
4 dropped in the entire Pacific theater of World War II, the
5 nation was destroyed, and the Korean people could only truly
6 rely on themselves to be able to rebuild their nation and have
7 self-determination.

8 Q Matt, you and I -- have you and I discussed North Korea
9 before?

10 A I don't -- I'm not sure.

11 Q Based on what you know about my political views, do you
12 think I'm a big fan of North Korea?

13 A No, sir.

14 Q Okay. North Korea is governed by the Communist Party; is
15 that right?

16 A Correct.

17 Q Okay. But you admire this regime in some way, do I
18 understand?

19 A Yes. I believe that the government of the Democratic
20 People's Republic of Korea advocates for Korean solutions to
21 their specific economic and geopolitical interests.

22 Q Yesterday we heard Ms. Froelich testify that the alt-right
23 used the terms "Jews," "communists" and "Antifa"
24 interchangeably. Is it your understanding that North Korea is
25 a Jewish country?

M. Heimbach - Cross

1 A No. It is a Korean country, much like China, which has
2 over 1 billion card-carrying Communist Party members, is a
3 Chinese country.

4 Q Yesterday did I hear you correctly when you said -- did
5 you say that white supremacy was some sort of TWP entry
6 requirement?

7 A We were actively opposed to white supremacy in all forms.

8 Q Could you please try to -- could you help alleviate some
9 confusion that might arise when -- between, I suppose -- well,
10 I think you can understand how people might get confused. Can
11 you try to help us out?

12 A Sure. Well, as I look at it, your ethnic community is
13 your extended family. So I have two sons. I'm a single father
14 right now. And I care about my sons' future. And that doesn't
15 mean that I hate my neighbors or I think my kids are better
16 than anyone else's kids, but as a nationalist, I have a primary
17 responsibility to my family, which would include my ethnic
18 extended family. It's not about thinking we're better. It's
19 just about duties and responsibilities and kinship.

20 Q Were you at some point a member of the National Socialist
21 Movement?

22 A Very briefly.

23 Q Suffice it to say you are not still a member of the
24 National Socialist Movement, then?

25 A I resigned.

M. Heimbach - Cross

1 Q Okay. When did that relationship end?

2 A 2018.

3 MS. DUNN: Objection, Your Honor. I believe there
4 was a motion on this issue.

5 THE COURT: Refresh my recollection about it.

6 MS. DUNN: Give me -- Court's indulgence, just one
7 moment, Your Honor. I need to refresh my own recollection.

8 MR. CANTWELL: Judge, for what it's worth, I think I
9 know where plaintiffs' counsel's confusion stems from and I'd
10 be happy to inform them.

11 MS. DUNN: Maybe, Your Honor, we could have a quick
12 sidebar.

13 THE COURT: Excuse me?

14 MR. SMITH: Maybe we could have a quick sidebar, Your
15 Honor.

16 MS. DUNN: Maybe, Your Honor, we could have a quick
17 sidebar to work this through. I thought there was a motion on
18 this topic.

19 THE COURT: Okay. All right. Come up.

20 (Sidebar commenced.)

21 MS. DUNN: I'm going to ask my colleague,
22 Mr. Isaacson, to speak to this because he worked on the motion
23 that I think is relevant to this issue. But I think the
24 general issue is testimony relevant to conversion ex post. And
25 I know that this issue has arisen with regard to Mr. Schoep.

M. Heimbach - Cross

1 Mr. Isaacson is more up to speed on whether there's been a
2 ruling, but I think we should bring the Court up to speed.

3 MR. ISAACSON: You'll remember, Your Honor, that you
4 granted a motion in limine with regard to Mr. Schoep's witness
5 and Mr. Schoep, who wanted to talk about what happened in 2018.

6 THE COURT: The witness couldn't speak to Mr. Schoep.
7 I think that's the main thing.

8 MR. ISAACSON: Well, you also --

9 THE COURT: And I said it makes no difference if
10 somebody has changed their opinion.

11 MR. ISAACSON: Yes, exactly. Exactly. Now the
12 questions are beginning to go to 2018 and afterwards, and
13 that's why Ms. Dunn wanted to know where this was going,
14 because it was after the events of Unite the Right.

15 THE COURT: All right.

16 MR. CANTWELL: I didn't want to interrupt but I can
17 save us some trouble. This is not where I'm going with it.

18 MS. DUNN: Oh, okay.

19 MR. CANTWELL: Mr. Heimbach parted ways with the NSM
20 on unfavorable terms and he was called a communist on his way
21 out. It's been stated that "Jews" and "communists" are
22 interchangeable terms, and so I'm trying to establish that that
23 is actually not the case in our culture. That's what I'm
24 trying to establish. I'm not going to try to talk about
25 anti-radicalization programming.

M. Heimbach - Cross

1 MS. DUNN: Okay.

2 (Sidebar concluded.)

3 THE COURT: We'll take a break in about ten minutes.

4 So go ahead.

5 MR. CANTWELL: Okay.

6 BY MR. CANTWELL:

7 Q When did your relationship with the National Socialist
8 Movement end, Mr. Heimbach?

9 A In the end of 2018.

10 Q Was it on good terms?

11 A It was not. I resigned and then they attempted to fire
12 me.

13 Q Did a senior member of that group call you a communist on
14 your way out?

15 A Yes.

16 Q Are you or have you ever been Jewish?

17 A I am not.

18 Q On Discord we saw yesterday that you called a user named
19 Commander Thomas the HNIC, and when asked what that meant you
20 said "head nigger in charge." Is this secret Nazi code
21 language?

22 A No. That comes from the rap community.

23 Q Okay. Is it your understanding that Commander Thomas was
24 black?

25 A No. He was a white man.

M. Heimbach - Cross

1 Q Were you trying to insult him by calling him a nigger?

2 A No. It was a joke.

3 Q Within the alt-right subculture was it unusual for those
4 immersed in this sort of social orbit to hurl derogatory racial
5 epithets at their white friends in contexts that might seem
6 bizarre to the uninitiated?

7 A That would be accurate.

8 Q Yesterday we saw several Discord conversations between you
9 and people you could not identify by their real name. Was it
10 at all unusual for you to talk with unidentified
11 pseudonymous social media accounts online?

12 A No. Due to the nature of the threat of Antifa violence or
13 losing your job, losing your home by folks who would be doxed,
14 it was common for people to try and protect their identities.

15 Q And when you interacted with such individuals, were you
16 conscious of the possibility that they might be infiltrators
17 who meant to do you and your associates harm?

18 A Yes.

19 Q Did you have any concern that they might be working for
20 the government?

21 A There absolutely is that concern.

22 MS. DUNN: Objection, Your Honor. The question was
23 leading and I don't think the answer was permissible.

24 MR. CANTWELL: I'll move on.

25 THE COURT: All right. Strike the question and

M. Heimbach - Cross

1 answer. Go ahead.

2 BY MR. CANTWELL:

3 Q In Plaintiffs' Exhibit 2871, we saw a wired microphone
4 hanging from your shirt. Could you please tell us the purpose
5 of that microphone?

6 A Yes. I had been doing an interview with a news crew.
7 That was one of the plaintiffs' exhibit from earlier in the
8 day. And they had miked me up as is common when you do
9 interviews.

10 Q Have you ever communicated with me using a walkie-talkie?

11 A No.

12 Q Yesterday when plaintiffs' counsel asked you about your
13 use of radio communications, you said, "not that I recall."

14 Are you saying now that you don't recall or that you never
15 did speak to me using a walkie-talkie?

16 A I don't believe I've ever spoken to you using a
17 walkie-talkie.

18 Q In any of your dealings as a leader of the Traditionalist
19 Worker Party or anything connected to this event or any
20 activities as an activist for political and social change, have
21 you knowingly acted at the behest of any government, foreign or
22 domestic?

23 A No.

24 Q You mentioned earlier that you had an entirely separate
25 plan for August 12th from Jason Kessler. But in the lead-up to

M. Heimbach - Cross

1 the events at the heart of this dispute, were you more involved
2 in the planning of the events?

3 A In regards to the overall event?

4 Q On the Charlottesville 2.0 Discord server, were you a
5 member of the leadership discussion channel?

6 A Yes.

7 Q Could you please describe to the jury my involvement with
8 that channel?

9 A I don't even believe you were in it or participated.

10 Q Did you have administrative or moderation privileges on
11 the Charlottesville 2.0 Discord server?

12 A I don't recall.

13 Q To the best of your knowledge, did I?

14 A To the best of my knowledge, no.

15 Q Yesterday there was some mention of a planning meeting in
16 July in Tennessee. Was that -- was that for the
17 Charlottesville 2.0 demonstration?

18 A It was a local event we were holding where logistics for
19 carpooling was discussed about Charlottesville.

20 Q So there was an event in Tennessee in July that was
21 separate from this event, but you discussed transportation to
22 the Charlottesville 2.0 event while you were there?

23 A Correct.

24 Q Okay. Could you please describe my involvement in that
25 meeting?

M. Heimbach - Cross

1 A You weren't there.

2 Q During the planning of Unite the Right, were you aware of
3 any deliberations or discussions about whether or not to invite
4 me to speak?

5 A I don't believe I was involved in any of those
6 discussions.

7 Q Yesterday the plaintiffs showed us some phone records
8 between you and Jason Kessler with the implication that you had
9 not --

10 MS. DUNN: Your Honor, objection to this question,
11 which appears argumentative and characterizes the implication
12 that plaintiffs were trying to make.

13 THE COURT: Sustained.

14 MR. CANTWELL: I'll withdraw it.

15 THE COURT: Okay.

16 BY MR. CANTWELL:

17 Q Mr. Heimbach, at any point during the course of this
18 litigation have you falsely denied communicating with me?

19 A No.

20 Q In Plaintiffs' Exhibit 1827 you were quoted as saying "the
21 enemy is threatening to kill us." Could you please elaborate
22 on that?

23 A Yes. Antifa organizers have very often attempted to
24 actually kill us by bringing weapons and attacking us. So
25 there was a very real fear that Antifa were going to once again

M. Heimbach - Cross

1 try to kill us.

2 Q In Plaintiffs' Exhibit 2268 you tweeted that it would be
3 better to hit the gas than be dragged out of your car and
4 beaten to death on November 14th, 2016. And was there a
5 specific such incident you were thinking of when you tweeted
6 that?

7 A Yes. Specifically I was thinking about the Reginald Denny
8 case from the LA riots where a white truck driver stopped his
9 vehicle and was dragged out of the vehicle and nearly murdered
10 in front of the entire country.

11 Q November 14th, 2016 would have been right after the
12 election of Donald J. Trump. Can you please describe for the
13 jury how you perceived left-wing so-called protests in the
14 lead-up to --

15 MS. DUNN: Your Honor --

16 BY MR. CANTWELL:

17 Q -- and following of that election?

18 MS. DUNN: Your Honor, objection. Relevance and
19 potential --

20 THE COURT: Sustained.

21 MS. DUNN: Thank you.

22 BY MR. CANTWELL:

23 Q At any of the protests surrounding the election of Donald
24 J. Trump did you see demonstrators blocking traffic?

25 A Yes.

M. Heimbach - Cross

1 Q Do you believe that any of those drivers had reason to
2 fear for their safety?

3 A Potentially.

4 Q Were you aware of legislation being proposed that would
5 legalize or otherwise indemnify a driver who kept going when
6 people illegally blocked traffic?

7 A Yes.

8 Q Could that legislation fairly be described as the product
9 of a fringe extremist in your opinion?

10 MS. DUNN: Objection, Your Honor. This line of
11 questioning --

12 THE COURT: Sustained.

13 MS. DUNN: And move to strike.

14 THE COURT: Well, he didn't answer. Strike the
15 question and answer.

16 BY MR. CANTWELL:

17 Q Do you recall an assault suffered by our co-defendant
18 Richard Spencer on inauguration day?

19 A Yes.

20 Q Do you recall any viral hashtags or memes that were
21 spawned from that unprovoked assault?

22 A Yes, such as #punchanazi.

23 MS. DUNN: Objection, Your Honor. There's quite a
24 lot of testifying in these questions. We're trying to let it
25 go, but Mr. Spencer can testify to this assault himself.

M. Heimbach - Cross

1 Mr. Cantwell can testify to his own experiences.

2 (Overlapping speakers.)

3 THE COURT: -- if he saw this before this, August 17,
4 if it had some effect upon his state of mind or actions.

5 MR. CANTWELL: That's the direction I'm taking,
6 Judge.

7 BY MR. CANTWELL:

8 Q In Plaintiffs' Exhibit 649 we saw mention of a bike lock.
9 Were bike lock references something that a particular
10 connotation -- that had a particular connotation within right
11 wing culture at this time?

12 A Yes. Not only -- before Charlottesville there had been
13 individuals, conservatives, Trump supporters that had been
14 attacked by Antifa with bike locks. But even for myself it
15 goes back further, during a demonstration that was permitted in
16 Terre Haute, Indiana. We were attacked by Antifa from Chicago
17 that came from out of state and attacked us with bike locks and
18 locks in socks. They attacked us from behind. So that's not
19 even new to 2017. That was a common Antifa tactic.

20 THE COURT: We're going to take about a 20-minute
21 recess now.

22 **(Jury out, 10:30 a.m.)**

23 (Recess.)

24 THE COURT: Call the jury back.

25 **(Jury in, 10:53 a.m.)**

M. Heimbach - Cross

1 THE COURT: You may be seated. You may proceed.

2 BY MR. CANTWELL:

3 Q Matt, before we went on the break we were discussing some
4 mention of a bike lock in a Discord server. Do you remember
5 where we left off there?

6 A Yes, sir.

7 Q You described a series of events where those types of
8 seemingly innocuous tools have been turned into weapons against
9 you and your associates --

10 MS. DUNN: Objection, Your Honor. This is testifying
11 for Mr. Cantwell. And he will have his own opportunity.

12 BY MR. CANTWELL:

13 Q You described your experience with bike locks.

14 Was there an event involving a bike lock preceding the
15 events at the heart of this dispute which would have been known
16 outside of your social circle?

17 A I don't believe known -- I'm not sure how well-known, but
18 I believe, the event you're referencing, there was perhaps --

19 MS. DUNN: Your Honor, objection. The question asks
20 about knowledge outside Mr. Heimbach's own social circle. So
21 he cannot testify to that.

22 THE COURT: Sustained.

23 BY MR. CANTWELL:

24 Q Have you ever heard the moniker "bike lock guy"?

25 A Yes.

M. Heimbach - Cross

1 Q Who is Eric Clanton?

2 A An anti-fascist.

3 Q Do you recall seeing news stories about Eric Clanton?

4 A Some.

5 MS. DUNN: Objection, Your Honor. Hearsay.

6 THE COURT: It's not hearsay. The question was had
7 he heard stories. That's not hearsay.

8 MS. DUNN: Your Honor, we also question the relevance
9 of this. It seems pretty far afield.

10 THE COURT: Well, you don't know yet. He hasn't
11 asked a question other than "do you know."

12 Go ahead.

13 BY MR. CANTWELL:

14 Q Mr. Heimbach, when you were discussing bike locks in the
15 Discord server, did that have some relation to the purchase of
16 shields and helmets?

17 A Yes, simply because Antifa were known to utilize not just
18 weapons, but tools such as bike locks as improvised weapons.

19 MS. DUNN: Objection, Your Honor. Again, we just ask
20 the Court to instruct the witness to testify to his own
21 personal knowledge and beliefs.

22 MR. SMITH: Your Honor, I believe that the witness
23 said that Trad Worker has been attacked with those very
24 weapons.

25 THE COURT: If it influences his opinion as to

M. Heimbach - Cross

1 Antifa, he can testify as to whatever may have helped form his
2 opinion.

3 BY MR. CANTWELL:

4 Q Yesterday you made several references to "militant
5 anti-fascists." Are you aware of a term for these groups that
6 would be popularly understood today?

7 A Antifa.

8 Q And to the best of your knowledge, is Antifa the sort of
9 thing one carries a membership card for?

10 A No.

11 Q And in contrast, the TWP, was this something that it was
12 possible to verify someone's membership in as a factual matter?

13 A Yes. We were an FEC-registered political party.

14 Q But for something like the alt-right or white nationalism,
15 setting aside "no true Scotsman"-type disputes, was this
16 something that somebody could be kicked out of?

17 A No.

18 Q So did you understand Antifa to have -- different views,
19 obviously, and tactics, but did you understand Antifa to have a
20 function more similarly to one of these structures than the
21 other?

22 A Yes. There was, to my understanding, no card-carrying
23 membership, but they existed to advance a specific political
24 agenda, usually through force.

25 Q So if some militant anti-fascist who thinks it's okay to

M. Heimbach - Cross

1 punch a Nazi says "I'm not an Antifa member," would you
2 understand that to be unfalsifiable?

3 MS. DUNN: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. CANTWELL:

6 Q Did you personally know anyone who had been harmed by
7 Antifa on August 11th, 2017?

8 MS. DUNN: Objection, Your Honor. Foundation.

9 THE COURT: Sustained.

10 BY MR. CANTWELL:

11 Q When you were approaching the events at the heart of this
12 dispute, did you have personal knowledge of individuals who had
13 been harmed by anti-fascists?

14 A Yes.

15 Q Did you fear for your safety on August 12th, 2017?

16 A Yes.

17 Q Did you fear for the safety of your men on August 12th,
18 2017?

19 A Yes.

20 Q Do you think -- in your conversations with other attendees
21 and planners, did you hear people voice their concerns about
22 their safety on August 12th, 2017?

23 A Yes.

24 Q In anticipation of this, was that why the TWP brought
25 shields and helmets?

M. Heimbach - Cross

1 A Yes.

2 Q If we could try to set aside race, religion, sexuality,
3 and the fact that they want you dead, do you think Antifa would
4 otherwise be good friends and business partners?

5 MS. DUNN: Objection, Your Honor, argumentative.

6 THE COURT: Sustained.

7 BY MR. CANTWELL:

8 Q Is race your only disagreement with Antifa?

9 A Not at all.

10 Q Would you be okay with an all-white drag queen story hour?

11 MS. DUNN: Objection, Your Honor.

12 THE WITNESS: No.

13 THE COURT: Sustained.

14 BY MR. CANTWELL:

15 Q If a million French people immigrated to your neighborhood
16 illegally, refused to learn English, collected welfare, called
17 you names --

18 MS. DUNN: Your Honor, objection. And perhaps we
19 should go to sidebar to discuss. This is leading,
20 argumentative, and testimony by the examiner.

21 THE COURT: I sustain the objection.

22 BY MR. CANTWELL:

23 Q Is race your only concern with regard to immigration
24 policy?

25 A No, not at all.

M. Heimbach - Cross

1 Q In Plaintiffs' Exhibit 2368 we saw a man named DeAndre
2 Harris get beaten by several men. To the best of your
3 knowledge, was that beating racially motivated?

4 A No.

5 MS. DUNN: Objection, Your Honor.

6 THE COURT: Sustain the objection.

7 MS. DUNN: And we do move to strike this testimony.
8 This entire line of questioning is not proper.

9 THE COURT: All right. Yes.

10 Disregard the question and answer.

11 BY MR. CANTWELL:

12 Q Did you hear a man shout "get the fuck out of here" in
13 that video?

14 A Yes.

15 Q Did you see anyone try to prevent him from leaving?

16 A No.

17 MS. DUNN: Objection, Your Honor. I understand that
18 Mr. Cantwell is a *pro se* defendant, but --

19 THE COURT: The video will speak for itself in that
20 regard. So --

21 MR. CANTWELL: Your Honor, if I could just be heard
22 on the question here. My understanding was they played this
23 video for Mr. Heimbach and asked his opinions about the video.

24 MR. SMITH: Several times, in fact.

25 MR. CANTWELL: And I'm only trying to -- to

M. Heimbach - Cross

1 cross-examine that line of questioning. That's the goal here.

2 MS. DUNN: Your Honor, just to be clear, what we
3 asked Mr. Heimbach was to identify the TWP shields in the video
4 and his co-defendant, which he did. And our position is the
5 same. This witness should be able to testify to his own
6 firsthand knowledge. We have given a lot of latitude here, but
7 at a certain point, this is not -- should not be evidence in
8 this case.

9 THE COURT: Well, the video will speak for itself. I
10 mean, the witness is in no better position than the jury to say
11 what's on the video.

12 BY MR. CANTWELL:

13 Q In Plaintiffs' Exhibit 1888 we saw you approaching Lee
14 Park with the library to your right-hand side. Can you tell me
15 what, if any, of our co-defendants were with you at that time?

16 A Dr. Hill and Michael Tubbs, and Matt Parrott was there.
17 Jeff Schoep as well.

18 Q Were you present for the testimony of Devin Willis?

19 A Some of the cross-examination.

20 Q Did you hear Mr. Willis say that you could have just gone
21 around him?

22 A I did hear that, yes.

23 Q At some point following the events at the heart of this
24 dispute, did you become aware that I got pepper-sprayed?

25 A Yes.

M. Heimbach - Cross

1 Q Do you know where I was pepper-sprayed, Mr. Heimbach?

2 MS. DUNN: Objection, Your Honor.

3 THE COURT: Do you know of your own knowledge where
4 he was?

5 THE WITNESS: I believe it was on Market Street.

6 MS. DUNN: Objection, foundation. Your Honor, the
7 witness did not see any of this himself.

8 THE COURT: Well, I don't know.

9 MS. DUNN: We don't know.

10 THE COURT: Well, ask him where you were when you saw
11 what you're testifying to.

12 MS. DUNN: Your Honor, the question --

13 MR. CANTWELL: I'll withdraw it. Withdrawn.

14 THE COURT: Strike -- disregard the question and
15 answer that's subject.

16 BY MR. CANTWELL:

17 Q Was it your understanding that you could have safely and
18 legally walked down any street and entered the park anywhere
19 you liked?

20 A Yes. In terms of the street on Market Street where the
21 police -- that was the plan that we had had, that we were
22 supposed to -- we had the right to walk down that street, yes.

23 Q I'm sorry. You're saying -- let me repeat the question
24 for you and --

25 A I apologize.

M. Heimbach - Cross

1 Q -- see if you actually understand it.

2 Was it your understanding that you could have safely and
3 legally walked down any street and entered the park anywhere
4 you liked?

5 A Safely, no. It should have been safely.

6 Q Okay. You had -- did you have a plan with the
7 Charlottesville Police Department of where to enter the park?

8 A Yes.

9 Q Okay. And of the several entrances to the park, which did
10 you understand to be the safest?

11 A The one closest to where the police had us park.

12 Q And is that where we saw the clash in Plaintiffs'
13 Exhibit 1888?

14 A Yes.

15 Q Do you understand one of the allegations in this case to
16 be ratifying racially motivated violence?

17 A Yes.

18 Q The plaintiffs asked you if you said something to the
19 effect of "James Fields did nothing wrong." Do you recall
20 that?

21 A Yes.

22 Q Do you believe that James Fields got a fair trial in
23 Charlottesville?

24 A No.

25 MS. DUNN: Objection, Your Honor.

M. Heimbach - Cross

1 THE COURT: Sustained.

2 BY MR. CANTWELL:

3 Q When you said --

4 MS. DUNN: And move to strike.

5 I apologize, Your Honor.

6 THE COURT: Disregard the question and answer.

7 Mr. Fields pled guilty, as I understand it, in Charlottesville.

8 And I don't --

9 BY MR. CANTWELL:

10 Q When you said that James Fields did nothing wrong, did you
11 mean that you approved of a racially motivated murder?

12 MS. DUNN: Objection, Your Honor, objection. Leading
13 and argumentative.

14 THE COURT: It's leading. You can ask him what he
15 meant by it.

16 BY MR. CANTWELL:

17 Q What did you mean when you said that James Fields did
18 nothing wrong?

19 A I believed that, based upon the video evidence available,
20 that his vehicle had been attacked and he likely feared for his
21 life.

22 Q Who is Dwayne Dixon?

23 A A member of Redneck Revolt, the Antifa paramilitary
24 organization.

25 Q Do you believe Dwayne Dixon is responsible for the death

M. Heimbach - Cross

1 of Heather Heyer?

2 MS. DUNN: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. CANTWELL:

5 Q Have you ever posted to social media that Dwayne Dixon did
6 nothing wrong?

7 THE COURT: Sustained. Well...

8 MS. DUNN: Thank you, Your Honor.

9 BY MR. CANTWELL:

10 Q Before we wrap this up, let's spend a little time talking
11 about national socialism and Adolf Hitler, shall we?

12 A Yes.

13 Q Have you read *Mein Kampf*?

14 A Yes.

15 Q Have you read it more than once?

16 A Yes.

17 Q Have you read more than one translation of *Mein Kampf*?

18 A Yes.

19 Q In *Mein Kampf*, did Hitler talk about exterminating Jews?

20 A No.

21 Q Did he talk about gas chambers?

22 A No.

23 Q Did he talk about ovens?

24 A No.

25 Q Where and under what conditions was *Mein Kampf* written?

M. Heimbach - Cross

1 A Adolf Hitler was imprisoned at the time.

2 Q Do you know what he was imprisoned for?

3 A Yes. For what was known as the Beer Hall Putsch.

4 Q And after the Beer Hall Putsch, did Hitler continue to
5 advocate for the violent overthrow of government?

6 A No. He utilized democracy to gather votes from the German
7 people to be democratically elected.

8 Q Did he advocate for uncontrolled criminal mayhem in the
9 streets?

10 A No. He advocated for law and order.

11 Q We hear these stories about so-called "Brownshirts"
12 terrorizing Germany prior to the National Socialist German
13 Workers' Party coming to power --

14 MS. DUNN: Objection, Your Honor. Objection.

15 (Reporter clarification.)

16 BY MR. CANTWELL:

17 Q We hear these stories about Brownshirts --

18 MS. DUNN: Your Honor, this is objectionable.

19 MR. CANTWELL: Judge, I want to understand what
20 Mr. Heimbach's -- how Mr. Heimbach believes --

21 THE COURT: Was he questioned about this?

22 MR. CANTWELL: I'm about to get to the question.

23 THE COURT: I mean, was he questioned on direct about
24 Brownshirts?

25 MS. DUNN: No, Your Honor.

M. Heimbach - Cross

1 MR. CANTWELL: No. He was questioned about national
2 socialism, Judge. I want to ask him about national socialism.
3 That's the goal.

4 THE COURT: All right. Ask him about national
5 socialism.

6 BY MR. CANTWELL:

7 Q Would an informed supporter of Adolf Hitler approve of --

8 MS. DUNN: Objection, Your Honor. He's asking --

9 THE COURT: Right. Sustained.

10 MS. DUNN: Thank you, Your Honor.

11 BY MR. CANTWELL:

12 Q Do you recall Adolf Hitler talking about torches as a
13 symbol of racial and national revolution?

14 A I don't recall any speeches of Hitler speaking of torches.

15 Q Do you remember anything of that sort in *Mein Kampf*?

16 A Not off the top of my head.

17 Q What, if any, revolution or revolutions did Hitler talk
18 about in *Mein Kampf*?

19 A The desire for a national revolution for the German
20 people. And also attempted armed uprisings by left wing
21 organizations.

22 Q And those armed uprisings, did Hitler view those
23 positively?

24 A No.

25 Q Have you ever unironically stated that Adolf Hitler did

M. Heimbach - Redirect

1 nothing wrong?

2 A Yes.

3 Q Do you believe that Adolf Hitler -- when you said that,
4 did you believe that Adolf Hitler murdered 6 million Jews?

5 A No.

6 MR. CANTWELL: No further questions.

7 THE COURT: All right. Thank you.

8 MR. SMITH: Your Honor, I have no questions for
9 Matthew. Thank you.

10 THE COURT: Thank you. You may step down.

11 Who is the next witness? Oh.

12 REDIRECT EXAMINATION

13 BY MS. DUNN:

14 Q Mr. Heimbach.

15 A Yes.

16 Q Defense counsel asked you some questions about an event in
17 Auburn?

18 A Yes.

19 Q Do you recall that?

20 And that took place in April of 2017, the Auburn event,
21 correct?

22 A Yes.

23 Q And Mr. Spencer gave a speech; you remember that?

24 A Correct.

25 Q You attended and so did other Traditionalist Worker Party

M. Heimbach - Redirect

1 members?

2 A Yes.

3 Q Okay. And you recall that you had shields at that event?

4 A Yes.

5 Q I'd like to play for Mr. Heimbach Plaintiffs' Exhibit
6 2523.

7 (Plaintiffs' Exhibit 2523 marked.)

8 BY MS. DUNN:

9 Q Are you able to see that?

10 A No.

11 MS. DUNN: 2523.

12 (Video playing.)

13 BY MS. DUNN:

14 Q Do you recognize this video?

15 A Yes.

16 MS. DUNN: Your Honor, we'd like to play for the jury
17 Plaintiffs' Exhibit 2523 and move it into evidence.

18 THE COURT: All right. Be admitted.

19 MS. DUNN: Thank you.

20 (Plaintiffs' Exhibit 2523 admitted.)

21 MS. DUNN: Do we have audio?

22 (Video playing.)

23 MS. DUNN: All right. So Mr. Spalding, if you could
24 just play the beginning of that video.

25 (Video playing.)

M. Heimbach - Redirect

1 BY MS. DUNN:

2 Q Mr. Heimbach -- pause there -- do you see yourself?

3 A I do.

4 MS. DUNN: Mr. Spalding, please continue.

5 (Video playing.)

6 BY MS. DUNN:

7 Q All right. And do you see yourself running with a shield?

8 A Yes.

9 Q Okay. Keep going, please, with the video.

10 (Video playing.)

11 We can stop the video. Mr. Heimbach, you recall being
12 asked about this in your deposition, correct?

13 A I don't recall exactly.

14 Q Okay. You were asked whether this video shows you
15 charging toward a group of counter-protesters. Do you recall
16 that your answer to that was yes?

17 A Sure. Yes.

18 Q Okay.

19 A For the purpose of we believed --

20 Q I just want to establish that you and I do not agree -- do
21 not disagree --

22 A Okay.

23 Q -- that at the Auburn event that counsel asked you about,
24 that you are, in fact, with a shield and other TWP members
25 charging into a group of people?

M. Heimbach - Redirect

1 A Charging in regards to we believed a comrade had been
2 caught and was potentially being attacked.

3 Q Okay. And so you believed that the belief that a comrade
4 had been caught was justification to run full force with your
5 shields into a group of people?

6 MR. SMITH: Your Honor, that calls for a legal
7 conclusion. Objection.

8 MS. DUNN: Your Honor, I'm asking about his belief.

9 THE COURT: Asking about his own belief.

10 THE WITNESS: We made no contact with
11 counter-protesters.

12 BY MS. DUNN:

13 Q Sir, that's not the question I asked you. And actually,
14 if I can ask my colleague to bring me -- it's a transcript,
15 just so it's not confusing to everyone what's happening. But
16 this way I can see your answers and my questions.

17 Thank you.

18 So my question to you was whether you believed that the
19 belief that a comrade had been caught, as you just testified,
20 was justification to run full force with other people into a
21 group of people?

22 A Towards a group of people, not into a group of people.

23 Q So --

24 A I believe if there was a vicious assault happening against
25 someone who was caught by themselves, then yes, it would be

M. Heimbach - Redirect

1 understandable and reasonable to try and prevent a violent
2 assault against an individual.

3 Q Okay. But at no time, including in your deposition, did
4 you mention a violent assault. This is the first time that
5 you've said that, even though you've been asked about this
6 video before, correct?

7 A Yes. It turns out the comrade --

8 Q Sir, just, please, answer my question and then if your
9 counsel wants to ask you more, he can.

10 A Sure. No.

11 Q And so I just want to make sure that we are all clear,
12 which is, based on your belief, your conduct in this video you
13 believe was justified?

14 A Yes.

15 Q As self-defense?

16 A No one was ever struck. So there was no self-defense
17 necessary to even discuss. And the entire incident shown in
18 that video --

19 Q Sir, you were asked --

20 MR. SMITH: Can we let the witness finish, please.

21 MS. DUNN: There was no question pending.

22 BY MS. DUNN:

23 Q Sir, you were asked in your deposition: "So you are
24 saying that the reason why you charged into a group of
25 counter-protesters with your shield was to defend somebody in

M. Heimbach - Redirect

1 the Traditionalist Worker Party?"

2 And you answered that question yes. Do you recall that?

3 A Yes.

4 Q Okay. And you stand by that answer, correct?

5 A Yes.

6 Q There was an event in Sacramento in July of 2017; you
7 recall that?

8 A Yes.

9 MR. SMITH: Your Honor.

10 MR. JONES: I think this is beyond the scope.

11 MR. SMITH: Yes, this is beyond the scope of
12 direct -- or beyond the scope of cross. Sorry, Your Honor.

13 MS. DUNN: Your Honor, it is not. A substantial
14 amount of the direct examination was aimed at this idea of
15 self-defense at rallies. And we are entitled to probe that
16 with this witness.

17 MR. SMITH: No, Your Honor. They're trying to get a
18 second chance at direct.

19 THE COURT: Well, didn't you put on your evidence
20 concerning that with him on direct?

21 MS. DUNN: No, Your Honor. This is in direct
22 response to their examination that just happened where he's --

23 THE COURT: We're going to have to go back now and
24 let all of these people come back if you bring up new stuff.

25 MS. DUNN: Your Honor, this is going to be very

M. Heimbach - Redirect

1 limited, but it is important because what he's describing is a
2 world view, and we allowed a lot of questions about his
3 general --

4 THE COURT: Come on. Talk about this instead of all
5 that's gone on before. Let's talk about this question right
6 now. I mean, why are you going into some new event on
7 redirect?

8 MS. DUNN: Your Honor, I think it will become
9 obvious. I think we've discussed that Mr. Heimbach is saying
10 the reason that he charged into a group of counter-protesters
11 is that he felt justified. So understanding what he thinks is
12 justified is very germane to this case and to this witness, who
13 is a defendant.

14 THE COURT: Well, he said he ran toward them
15 because -- in his deposition and here --

16 MS. DUNN: Right.

17 THE COURT: -- because he thought somebody else was
18 having --

19 MS. DUNN: Right.

20 THE COURT: -- was one of his --

21 MS. DUNN: And what we are entitled to establish is
22 that this is a pattern, that this has happened before, and that
23 that's his view.

24 THE COURT: Well, is it a pattern that he goes toward
25 a friend who's being attacked? Is that what you're trying to

M. Heimbach - Redirect

1 establish?

2 MS. DUNN: Two things, Your Honor. It is a pattern
3 that -- that Mr. Heimbach and the members of the Traditionalist
4 Worker Party take action that they regard as self-defense, but
5 that will not be shown to be self-defense. But the other --

6 MR. SMITH: Your Honor --

7 THE COURT: Do you have someone there that --

8 MS. DUNN: What I'm going to ask him about is a logo
9 of his own party who is a defendant in this case. I don't have
10 to go into the details of the event. It's just he and the
11 Traditionalist Worker Party are defendants, and they -- this is
12 well within the scope. He was also asked about many --
13 globally about prior events and his experience.

14 MR. SMITH: The word "Sacramento" came up exactly
15 zero times in his cross-examination, I believe.

16 THE COURT: I don't recall anything about Sacramento.

17 MS. DUNN: Your Honor, we'd ask a small amount of
18 latitude.

19 THE COURT: Go ahead. Ask your question. Let's see.

20 BY MS. DUNN:

21 Q Okay. Mr. Heimbach, we'd just ask you to take a look at
22 PX3820, what you're seeing on the screen.

23 Can we make that more visible?

24 MS. DUNN: Oh, I apologize. It's 3840, which could
25 have led to some confusion.

M. Heimbach - Redirect

1 THE CLERK: 3840?

2 MS. DUNN: Yes.

3 (Plaintiffs' Exhibit 3840 marked.)

4 MR. JONES: My exhibits stop at 3806. How many other
5 exhibits past 3806 are there?

6 MS. DUNN: Your Honor, I don't know the answer to
7 that question. We, I am sure, have copies for defense counsel
8 and can get this over to them.

9 THE COURT: Have you asked your question?

10 BY MS. DUNN:

11 Q Mr. Heimbach, do you recognize this?

12 A Yes.

13 Q This is a logo and a patch. It's a patch that you see
14 photographed here, but it was also used as a logo on the TWP
15 website; is that correct?

16 A I don't believe a logo. We only had one party logo.

17 Q But you recognize this to be a TWP patch?

18 A Not exclusively.

19 Q How about at all, do you recognize it to be a TWP patch?

20 A I don't believe it was an official patch. If you're
21 referring to the events in Sacramento, there were different
22 organizations there.

23 Q Mr. Heimbach, this patch was displayed by TWP members
24 after the incident in Sacramento.

25 A Yes.

M. Heimbach - Redirect

1 MS. DUNN: Yes. Your Honor, we'd move to admit this
2 exhibit, 3840.

3 MR. JONES: Your Honor, I don't think it's relevant.
4 It's not a shield. I don't see how they've connected it.

5 MR. SMITH: Agree, Your Honor.

6 THE COURT: Who -- just a minute.

7 Okay. Be admitted.

8 (Plaintiffs' Exhibit 3840 admitted.)

9 MS. DUNN: Thank you, Your Honor. We ask that this
10 be shown to the jury.

11 BY MS. DUNN:

12 Q Mr. Heimbach, this patch that was made after the
13 Sacramento event in 2016, you would agree that it shows a man
14 striking another man from behind with a stick or a pole?

15 A Yes.

16 Q Thank you.

17 Mr. Heimbach, you were asked some questions about your
18 post from 2016 which showed a foot on a gas pedal and said "hit
19 the gas." Do you remember that?

20 A Yes.

21 Q And you referenced Reginald Denny; do you remember that?

22 A I do.

23 Q The Reginald Denny incident happened in 1992, correct?

24 A Correct.

25 Q Okay. You were also asked some questions about

M. Heimbach - Redirect

1 communications that you had with both Mr. Cantwell and
2 Mr. Spencer. Do you recall that?

3 A Yes.

4 Q Both Mr. Cantwell and Mr. Spencer asked you questions
5 about communications with them, including phone calls and text
6 messages. Do you recall that?

7 A Yes.

8 Q We'd like to show you Plaintiffs' Exhibit 3137.

9 (Plaintiffs' Exhibit 3137 marked.)

10 BY MS. DUNN:

11 Q Now, you're aware, Mr. Heimbach, that plaintiffs filed
12 this lawsuit on October 11th of 2017, correct?

13 A Yes.

14 Q And this is a text communication that you see on the
15 screen from October 12th of 2017 --

16 MR. SMITH: Your Honor, I'm going to object. I don't
17 see how this is any part of the cross-examination that
18 occurred. They're way outside the scope at this point.

19 MS. DUNN: Your Honor, he was --

20 MR. SMITH: Way outside, Your Honor.

21 MS. DUNN: He was asked repeatedly about -- sorry, he
22 was asked repeatedly about communications between Mr. Cantwell
23 and Mr. Spencer and himself in order to establish the lack of
24 those communications and the metes and bounds. And we are
25 entitled to ask about communications and lack thereof.

M. Heimbach - Redirect

1 THE COURT: Is this something you did not enter --
2 you did not bring up on direct?

3 MS. DUNN: It was not -- it had not been -- this is
4 proper redirect because it's directly responsive.

5 THE COURT: Did you bring this up on direct?

6 MS. DUNN: This exhibit, no.

7 THE COURT: Okay. Go ahead.

8 MS. DUNN: Thank you.

9 BY MS. DUNN:

10 Q Mr. Heimbach?

11 A Yes.

12 Q You recognize this to be a text message between yourself
13 and Mr. Spencer from October 12th, the day after this lawsuit
14 was filed. Do you see that?

15 A Yes.

16 MS. DUNN: Your Honor, we'd ask that 3137 be admitted
17 and published.

18 THE COURT: You're talking now about after the
19 events. I mean, they've obviously been discussing the case
20 since it was filed. But I mean, as I understood Mr. Spencer
21 and Mr. Cantwell's testimony is what they -- contacts they did
22 not have with him prior to Unite the Right, Charlottesville,
23 August 2017.

24 MS. DUNN: Your Honor, as I understood it, it was
25 both during that time period and as related to those events.

M. Heimbach - Redirect

1 And so this -- this would be related. We also --

2 THE COURT: Well, I didn't understand it that way.

3 The jury will have to determine. I think this is beyond the
4 scope.

5 MS. DUNN: Okay. Your Honor. That's fair.

6 MR. SMITH: Thank you, Your Honor.

7 BY MS. DUNN:

8 Q So Mr. Heimbach, in 2017, on the topic of your
9 communications via telephone, which was raised by defense
10 counsel, you used an Android cell phone to discuss the events
11 in Charlottesville and to text with other defendants, correct?

12 A Yes.

13 Q And when we asked you in your deposition what you had
14 texted about, you said you couldn't remember anything that you
15 had texted to anybody. Do you recall that?

16 A Yes.

17 Q And two months after this lawsuit was filed you replaced
18 your Android phone with a new cell phone. It was a Blackview
19 800 Pro?

20 A I believe so.

21 Q Okay. And you said that you did that because your
22 2-year-old had busted it beyond repair. Do you remember that?

23 A Yes.

24 Q All right. So you did not produce to plaintiffs in this
25 case anything from your Android phone that you used before,

M. Heimbach - Redirect

1 during, and after Charlottesville 2.0, correct?

2 A No, because my ex-wife tossed it.

3 Q Right. So we'll talk about that.

4 MR. SMITH: Your Honor, I don't think we should talk

5 about that. That's way beyond the scope of direct and cross.

6 They had an opportunity to ask about all this, Your Honor.

7 They passed on it.

8 THE COURT: It didn't come up on cross.

9 MS. DUNN: Your Honor, Defendants Cantwell and

10 Spencer asked Mr. Heimbach about communications between these

11 defendants, and --

12 MR. JONES: Before the --

13 MR. SMITH: Yes, Your Honor. They asked about before

14 the rally.

15 THE COURT: Please don't interrupt.

16 MR. SMITH: I'm sorry, Your Honor. I thought --

17 MS. DUNN: Thank you, Your Honor. The reason that

18 communications do not exist in part is because we did not

19 receive in discovery any communications for Mr. Heimbach, and

20 there are reasons for that. And so we are entitled, in

21 response to their saying what communications exist, to show the

22 jury that we did not receive communications and why that was.

23 THE COURT: Well --

24 MR. SMITH: That was --

25 THE COURT: We don't know if that's why it was, but

M. Heimbach - Redirect

1 you can show -- you can bring out that --

2 MR. SMITH: They want to do another direct
3 examination, Judge.

4 MS. DUNN: Your Honor, we are just going to ask this
5 witness questions and he's answering them. We're not -- if it
6 doesn't show why, it won't show why. But we're entitled to ask
7 the questions.

8 THE COURT: Well, ask relevant questions.

9 MS. DUNN: Yes.

10 BY MS. DUNN:

11 Q All right. So we just discussed, Mr. Heimbach, that you
12 replaced the Android phone with a Blackview phone, and then you
13 used the new Blackview phone to send text messages concerning
14 Charlottesville 2.0?

15 A I can't recall exactly what text messages I sent four
16 years ago.

17 Q Right. But you don't disagree, do you, with what you told
18 us in your deposition, is that you used that Blackview phone to
19 send text messages concerning Charlottesville 2.0?

20 A Could be.

21 Q Well, if you disagree with that, you can turn to your 2019
22 deposition, page 331 to 332, lines 23 to 18, but if you --

23 MR. SMITH: Excuse me. Are you saying you'd like to
24 admit that testimony?

25 THE COURT: Please don't talk to the lawyer.

M. Heimbach - Redirect

1 MR. SMITH: Your Honor, is counsel saying that she
2 wants to admit that testimony? If so, she needs to show how
3 it's contrary to what he's saying now.

4 MS. DUNN: Your Honor, Mr. Heimbach has testified
5 about two phones. The first phone, he has agreed that he
6 texted and used the phone for communications about Unite the
7 Right. The second phone we just discussed, I asked him whether
8 he had used that phone as well to send texts and to use the
9 phone for the Unite the Right planning. He didn't remember.
10 And so I'm referring him to his deposition to refresh his
11 recollection about his testimony.

12 THE COURT: All right. Just read the question and
13 answer and let's go.

14 BY MS. DUNN:

15 Q Mr. Heimbach, the question about the Blackview phone was:
16 "And you sent text messages on that phone concerning the Unite
17 the Right in some way, right?

18 "Answer: Uh-huh.

19 "Question: Is that a yes?

20 "Answer: Yes."

21 A Could you give me the page and line number again?

22 Q 331 to 332, line 23 on 331, line 18 on 332.

23 A Okay. Pardon me.

24 Q Do you see that?

25 A Yes, ma'am.

M. Heimbach - Redirect

1 Q Okay. All right. So you've testified under oath that --
2 well, to begin with, the Android phone, we've agreed we didn't
3 get anything from that phone?

4 A Correct.

5 Q And we'll talk about that. But you've also testified
6 under oath that the Blackview phone was replaced by your wife,
7 Jessica Heimbach, without your permission as an early birthday
8 present. You recall that?

9 A Yes.

10 Q So you didn't produce the text messages that you sent and
11 received about Charlottesville 2.0 from the Blackview phone
12 either, correct?

13 A Correct.

14 Q Okay. You also used an ASUS laptop to create documents
15 related to Charlottesville 2.0. Do you recall that?

16 A All of which were on Google Docs that I did supply to
17 plaintiffs.

18 Q But you recall discussing that laptop?

19 A Yes.

20 Q And after this lawsuit was filed, you recall testifying
21 that the only effort you made to preserve evidence was to put
22 both the Android phone and the laptop in an unlabeled and
23 uncovered plastic tub. You recall that?

24 A I mean, I'm a working class guy that lived in a trailer at
25 the time. A separate space that seemed appropriate.

M. Heimbach - Redirect

1 Q I'm just asking whether it's accurate that that was your
2 only effort to preserve the evidence in this case after the
3 lawsuit was filed, was to put the phone and the laptop in the
4 tub?

5 A Yes. I believe that was sufficient.

6 Q And at this point, even though you knew that the lawsuit
7 had been filed and you had a lawyer --

8 MR. SMITH: Objection. Counsel is editorializing and
9 she should just ask a question.

10 THE COURT: Go ahead.

11 BY MS. DUNN:

12 Q You've testified that you didn't tell your lawyer at the
13 time that the phone and the laptop were in a tub in your house?

14 A I don't recall every conversation I had with my lawyer at
15 the time.

16 Q And you claim that after a domestic dispute your ex-wife
17 gave your neighbors permission to dispose of the tub, correct?

18 A Along with the rest of my stuff.

19 Q Right. And that's a different -- so the ex-wife
20 responsible for the phone that is not available to us was
21 Jessica Heimbach, right?

22 MR. SMITH: Your Honor, can I request a sidebar,
23 please?

24 THE COURT: Just a minute.

25 I don't think it's necessary. Let's go.

M. Heimbach - Redirect

1 BY MS. DUNN:

2 Q So with regard to the phone, that was -- that was replaced
3 as an early birthday present, that was your second wife?

4 A Correct.

5 Q And with regard to the disposal of the tub with the first
6 phone and the laptop, that was your first wife, correct?

7 A Correct.

8 Q And you've also testified that your second wife -- that
9 your second wife deleted your VK social media account after you
10 had an argument about taking out the trash. Do you recall
11 that?

12 A Yes.

13 Q VK is like Russian Facebook, right?

14 A Yes.

15 MR. SMITH: Your Honor, objection. I don't remember
16 counsel talking about VK ever in this case. This is the first
17 time that word's ever come up.

18 THE COURT: Okay. It's come up now. Go ahead.

19 BY MS. DUNN:

20 Q And so your second wife, you said, deleted the VK social
21 media account after you had an argument about taking out the
22 trash, right?

23 A Correct.

24 Q That's the same wife who replaced your old phone as an
25 early birthday present, right?

M. Heimbach - Redirect

1 A Correct.

2 Q Okay. And you have also said that your second wife did
3 the same thing with your Gab account, that she deleted it after
4 an argument about taking out the trash. Do you remember saying
5 that?

6 A Or similar argument.

7 Q Right. But do you remember saying that your second wife
8 deleted your Gab account after an argument about taking out the
9 trash?

10 A Yes.

11 Q Or a similar argument.

12 Okay. And you said that you liked social media so much
13 that this was her way to get back at you, right?

14 A Yes.

15 MS. DUNN: Okay. Your Honor, we'd like to play for
16 impeachment purposes Plaintiffs' Exhibit 3472. It's hour
17 20:29, minute 38, to hour 2:30:25. It's possible I read the
18 numbers wrong, but I'll fix the time stamp.

19 THE COURT: All right.

20 MR. JONES: What was the exhibit number?

21 MS. DUNN: 3472.

22 MR. JONES: Okay. Thank you.

23 (Plaintiffs' Exhibit 3472 marked.)

24 MR. KOLENICH: Your Honor, we'd like to request some
25 sort of limiting instruction regarding this testimony of

M. Heimbach - Redirect

1 Mr. Heimbach. She's going into great detail about discovery
2 violations. There were motions about discovery violations and
3 limiting instructions.

4 THE COURT: All right.

5 Members of the jury, if Mr. Heimbach has not done
6 anything regarding failure to make discovery, it is not to be
7 considered by you as evidence against any of the other
8 defendants. It only pertains to him.

9 Some of the evidence in this case applies only to the
10 party that the Court tells you. And you're required not to use
11 that evidence against any of the other parties. You may use it
12 against the party directly involved.

13 Go ahead.

14 MR. CANTWELL: Before we start with this, Judge,
15 they're about to play an audio clip. This was a technical
16 concern that I had brought up earlier. I may, or any of my
17 co-defendants may, wish to object to playing this audio, but
18 we're not able to hear the audio without playing it out loud in
19 this courtroom. That's a challenge that I think we have.

20 THE COURT: Well, we'll just have to --

21 MS. DUNN: Your Honor, this is being used for
22 impeachment purposes. So we can hand up to Your Honor a
23 transcript, but it's -- the rules that Mr. Cantwell just
24 articulated, which are proper in other circumstances, are not
25 for impeachment.

M. Heimbach - Redirect

1 THE COURT: All right. Go ahead.

2 (Video playing.)

3 BY MS. DUNN:

4 Q Mr. Heimbach, I just want to make sure that you recognize
5 your own voice in this podcast.

6 A I do. And, respectfully, I wasn't about to announce to
7 Mr. Cantwell's audience private domestic disputes between my
8 wife at the time and I. That would be wildly inappropriate, to
9 betray her confidence and things that happened privately behind
10 closed doors.

11 Q So, Mr. Heimbach, your testimony, then, is when you said
12 on November 12th of 2018, during the time that this lawsuit was
13 going on, to Mr. Cantwell that you had to delete your account,
14 that that was not true, and that it's still true that your wife
15 deleted your Gab account after a domestic dispute about
16 throwing out the trash?

17 A Correct.

18 Q Okay. And then when you go on to say "I had to delete my
19 account" and then you reference "my lawyer dealing with legal
20 stuff, he was like, 'uh, no,'" are you -- are you saying that
21 your lawyer dealing with your legal stuff knew that you had
22 deleted your Gab account?

23 A I don't believe so. Again, I don't think any personal
24 conflicts at my home was something I was about to broadcast to
25 a very wide audience. That would be wildly inappropriate to

M. Heimbach - Redirect

1 do.

2 Q But you don't deny that that's what we just heard you say
3 about your lawyer, correct?

4 A Correct.

5 MS. DUNN: Your Honor, at this time --

6 MR. SMITH: Your Honor, if I could quickly: We
7 should probably make a note as to which lawyer the witness is
8 talking about, if any. It's not me.

9 THE COURT: You can ask him.

10 MS. DUNN: Your Honor, I have no further questions.

11 MR. CANTWELL: May I recross?

12 MS. DUNN: Oh. I apologize. I do actually have one
13 other question.

14 THE COURT: Who was he talking -- who were you
15 talking to in that recording?

16 THE WITNESS: Mr. Cantwell, Your Honor.

17 THE COURT: You were talking to Mr. Cantwell?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: And when was that? What was the date of
20 that conversation?

21 MS. DUNN: Let me find it again.

22 November 12th of 2018.

23 THE COURT: All right. Okay.

24 BY MS. DUNN:

25 Q I apologize. One additional thing, Mr. Heimbach. And

M. Heimbach - Redirect

1 this won't take very long.

2 MS. DUNN: Can we put up on the screen for
3 Mr. Heimbach 3304N?

4 (Plaintiffs' Exhibit 3304N marked.)

5 BY MS. DUNN:

6 Q Can you read this?

7 A No.

8 Now I can.

9 Q These are your interrogatory responses in this case.

10 You were asked on cross-examination by defense counsel
11 about your conversations with the Charlottesville Police
12 Department?

13 A Yes.

14 MS. DUNN: I'd like to admit this into evidence,
15 3304N, and show the jury.

16 THE COURT: All right. It will be admitted.

17 (Plaintiffs' Exhibit 3304N admitted.)

18 MS. DUNN: Thank you.

19 BY MS. DUNN:

20 Q Looking at Questions 6 and 7, these were questions where
21 we asked you to state under oath your answers?

22 A Yes.

23 Q And this was during the duration of this lawsuit, so some
24 time ago, closer in time to the events of 2017. You understand
25 that?

M. Heimbach - Redirect

1 A Yes.

2 Q Okay. And you see that Question 6 asks you to identify
3 each communication concerning the events you had with each
4 member of law enforcement, whether before, during, or after the
5 events?

6 A Correct.

7 Q Do you see that?

8 And your response is simply: "Mr. Parrott and I called
9 Charlottesville PD and maybe some other agency, but I can't
10 recall exactly, to try to coordinate plans. I can't recall who
11 exactly I spoke to or any other details of the interaction."

12 Correct?

13 A Correct.

14 Q And then Question 7, we asked you to identify each
15 communication concerning the events you had with any government
16 official, whether before, after, or during the events, and then
17 including details of that.

18 Do you see that?

19 A Yes.

20 Q And you say -- in response to this question asking about
21 before, after, or during the events, you say: "To my
22 knowledge, my only communication with government officials for
23 this event was during the event and calling the Charlottesville
24 PD officers/assorted state police 'pigs' and 'class traitors.'"

25 Do you see that?

M. Heimbach - Recross

1 A Yes.

2 MS. DUNN: Thank you, Mr. Heimbach. I have no
3 further questions at this time.

4 MR. CANTWELL: May I recross? Yes?

5 THE COURT: Yes.

6 MR. CANTWELL: Is this your device?

7 MS. DUNN: Oh, I'm sorry.

8 MR. CANTWELL: No problem.

9 RE CROSS-EXAMINATION

10 BY MR. CANTWELL:

11 Q Mr. Heimbach, have you listened to more than one episode
12 of the Radical Agenda?

13 A Yes.

14 Q Have you heard the introduction to the Radical Agenda?

15 A Yes.

16 Q Can you tell us how the Radical Agenda is marketed?

17 MS. DUNN: Objection, Your Honor. Scope.

18 THE COURT: Did this come up on redirect?

19 MR. CANTWELL: They just played a clip from the
20 Radical Agenda.

21 MR. SMITH: That's true, Your Honor.

22 MR. CANTWELL: And so I'd like to --

23 THE COURT: Was the clip involving you?

24 MR. CANTWELL: Yes. That's the clip that they just
25 played.

M. Heimbach - Recross

1 THE COURT: All right. Go ahead.

2 BY MR. CANTWELL:

3 Q Do you understand the Radical Agenda to be an
4 entertainment product?

5 A Absolutely.

6 Q And is it your understanding that it would be legally
7 advisable to brag about destroying evidence in public?

8 MS. DUNN: Objection, Your Honor.

9 THE WITNESS: That would not be.

10 MS. DUNN: Objection. And move to strike.

11 THE COURT: Sustained.

12 BY MR. CANTWELL:

13 Q Mr. Heimbach, why did you say on my radio show that your
14 lawyer told you to destroy evidence?

15 A Because --

16 THE COURT: Go ahead. Answer the question.

17 THE WITNESS: Because the truth of having a domestic
18 dispute is something that's embarrassing and not particularly
19 fit to the audience of an entertainment program. That's,
20 respectfully, no one's business but my own.

21 BY MR. CANTWELL:

22 Q Did we laugh after you said that?

23 A Yes.

24 MR. CANTWELL: No further questions.

25 THE COURT: All right.

M. Heimbach - Recross

1 RE-CROSS-EXAMINATION

2 BY MR. SMITH:

3 Q Mr. Heimbach, when you're referring to "a lawyer" told you
4 that, were you referring to me, Joshua Smith?

5 A No.

6 Q Was I your lawyer at the time that --

7 THE COURT: Mr. Smith, why don't you --

8 MR. SMITH: It's just these two questions, Your
9 Honor.

10 THE COURT: Sir?

1 MR. SMITH: Yeah.

12 THE COURT: Well, it's just --

13 MR. SMITH: You want me to go to the podium? Okay.

4 BY MR. SMITH:

15 Q Is that person that you were talking about, that lawyer,
16 is that person still your lawyer currently?

17 A No.

18 MR. SMITH: Okay. No further questions, Your Honor.

19 THE COURT: All right. Thank you.

20 You may step down.

21 Call the next witness.

22 Members of the jury, you're going to hear this
23 instruction again, but you will hear about the duty to preserve
24 evidence and duty to make -- that there's a duty to disclose
25 all relevant and non-privileged evidence that either side

23 instruction again, but you will hear about the duty to preserve

24 evidence and duty to make -- that there's a duty to disclose

25 || all relevant and non-privileged evidence that either side

M. Heimbach - Recross

1 possesses. They are to produce it for the other.

2 And you're going to hear that sanctions, certain
3 sanctions, will apply to anyone who doesn't properly make
4 discovery and doesn't properly preserve evidence in the case.
5 And you are cautioned, however, that each party is entitled to
6 have the case decided solely on the evidence that applies to
7 that party.

8 Any sanctions against these parties will have no
9 bearing on the other parties, and in any event does not relieve
10 plaintiffs of their burden to prove by a preponderance of the
11 evidence the conduct committed by the defendants in the case --
12 other defendants in the case.

13 All right. You may proceed.

14 MS. KAPLAN: Plaintiffs call Diane D'Costa, Your
15 Honor, and she will be examined by my colleague Mr. Levine.

16 THE COURT: All right.

17 MR. SMITH: Your Honor, may we --

18 (Discussion off the record.)

19 THE COURT: Is the witness on the way?

20 MR. SMITH: Your Honor, may I be excused with my
21 client?

22 THE COURT: What?

23 THE CLERK: He's asking if he and his client can be
24 excused from the courtroom.

25 MR. SMITH: Is that okay?

D. D'Costa - Direct

1 THE COURT: Yes. You don't have to be here.

2 MR. LEVINE: Your Honor, may I go get the witness?

3 THE COURT: Well, I hope the witness is on the way.

4 MR. LEVINE: She's right outside, Your Honor.

5 THE COURT: Call the witnesses in. Call the witness.

6 You may leave.

7 (Discussion off the record.)

8 MR. LEVINE: Your Honor, could they wait until the
9 witness gets on the witness stand?

10 THE COURT: What?

11 MR. LEVINE: Could the defendants please wait until
12 the witness gets on the witness stand?

13 THE COURT: No. They can go on and leave. It's just
14 taking too much time. They can just leave.

15 MR. SMITH: Thanks, Judge.

16 DIANE D'COSTA, CALLED BY THE PLAINTIFFS, SWORN

17 DIRECT EXAMINATION

18 BY MR. LEVINE:

19 Q Please state your name for the record and remove your
20 mask.

21 A My name is Diane D'Costa, D-I-A-N-E, D, apostrophe,
22 C-O-S-T-A.

23 Q Are you have currently employed?

24 A I am.

25 Q What do you do?

D. D'Costa - Direct

1 A I am a middle school teacher in a charter school in DC.

2 Q What is the highest level of your education?

3 A A bachelor's degree from the University of Virginia.

4 Q Was that here in Charlottesville?

5 A Yes.

6 Q When did you begin attending UVA?

7 A I came in the fall of 2014.

8 Q And when did you graduate?

9 A The spring of 2018.

10 Q Ms. D'Costa, do you identify with a particular religion?

11 A I do. I'm Jewish.

12 Q And what was the makeup of your family's religious
13 situation?

14 A Yeah, my mom was Jewish. My dad is Catholic. And we kind
15 of grew up celebrating all the holidays.

16 Q Have you always identified as Jewish?

17 A I have, and in my young adulthood really stepped into my
18 Jewish identity.

19 Q Were you involved in organizations while you were an
20 undergraduate?

21 A Many, yes.

22 Q Could you please tell the jury what they were?

23 A I was a resident advisor for first-year students. I was a
24 tour guide. I was part of the Jewish women's group at the
25 Hillel. I did ceramics. A number of things.

D. D'Costa - Direct

1 Q Were you an officer of your class?

2 A Oh, yeah. I was vice president of my class.

3 Q So in August of 2017, were you entering your senior year
4 at UVA?

5 A Yes.

6 Q Where were you scheduled to live?

7 A I was selected to live on the Lawn.

8 Q Could you please tell the jury what the Lawn is at UVA?

9 A The Lawn is the historical part of our grounds. It's
10 where the Rotunda is. It was originally built in 1817. There
11 are student Lawn rooms and professor pavilions with grass in
12 the middle.

13 Q What is the -- what are the structures made of?

14 A Yeah, it's, like, brick and wood. All my furniture was,
15 like, oak. It's, like, historical. So it's preserved with,
16 like, the historical construction that they used; horse hair,
17 stuff like that.

18 Q How did you get to be able to live there for your senior
19 year?

20 A I applied at the end of my third year.

21 Q And is it competitive to live on the Lawn?

22 A Yes. It's kind of a big deal. There are, like, hundreds
23 of applicants for 53 rooms.

24 Q And could you please describe a student's room on the
25 Lawn?

D. D'Costa - Direct

1 A Yeah. So the Lawn rooms are single rooms that open
2 straight to the outside. So the outside door, if you open it
3 and look into the room, there's a window at the back. There's
4 a fireplace on either side, a lofted bed, and a water cabinet
5 with a sink, and that's about it.

6 Q So there are no bathrooms in the rooms?

7 A No. We would walk outside to the bathrooms.

8 Q What is a pavilion?

9 A The pavilions were -- well, they're two-story, like,
10 houses. They have the modern amenities of kitchens and
11 bathrooms, but it's where professors live.

12 Q When did you move into your room on the Lawn in August of
13 2017?

14 A I moved in on August 11th of 2017.

15 Q And just describe for the jury physically what the Lawn is
16 and where your room was in relation to it.

17 A So the Rotunda is at the top of the Lawn, the north end of
18 the Lawn. Then there's the West Lawn and the East Lawn, two
19 parallel tracks of student Lawn rooms, and professor pavilions
20 interspersed in between.

21 I lived in 48 East, which was on -- looking at the
22 Rotunda, the right side of the Lawn, further south.

23 Q So if the Lawn was a football field, the Rotunda would be
24 at one set of the goal posts. Where was your room in relation
25 to the Rotunda?

D. D'Costa - Direct

1 A I was, like, kind of towards the other end of the goal
2 post, if it's a football field, and I was on, like, the
3 sideline on the right.

4 Q Now, focusing in on August of 2017, before you moved into
5 your room on August 11th, had you heard anything about a Unite
6 the Right rally scheduled for Charlottesville?

7 A I hadn't heard anything for the 11th. I heard that
8 something might be happening at the Robert E. Lee statue
9 downtown, but I didn't have much more information than that.

10 Q And when did you understand the events were scheduled for
11 the Robert E. Lee statue?

12 A For the 12th. I didn't know anything other than the 12th.

13 Q Had you heard anything about who would be coming for that
14 rally?

15 A I heard that it was white nationalists, the alt-right, who
16 wanted to organize around the statue.

17 Q And after you moved in on August 11th, that Friday, what
18 did you learn, if anything, about plans for Friday night
19 activity?

20 A I learned that evening that some of the alt-right white
21 nationalists might be coming to grounds or the Lawn that night.
22 I didn't know much information beyond that.

23 Q Were you in your dorm room around 9:30, 10:00 at night on
24 Friday, August 11?

25 A I was.

D. D'Costa - Direct

1 Q What did you hear?

2 A From inside my Lawn room, I could hear the chants of "you
3 will not replace us." And then I heard "Jews will not replace
4 us," in that, like, rhythmic chant.

5 Q And could you describe the tone of what you were hearing?

6 A I could only describe it as like an angry mob. It was
7 loud. It kept going. It was like this guttural belly chant
8 that just kept going, of, like, "Jews will not replace us,"
9 over and over again.

10 Q Was your door closed at that time to the Lawn?

11 A It was.

12 Q Did you try to see what was going on?

13 A Once I heard the chants, I looked out my peephole, and so
14 I was looking through that peephole to see what was happening.

15 Q And how big was that peephole?

16 A Maybe an inch, half an inch.

17 Q And did you have your eye right at the peephole?

18 A Once I heard the chants, I was staring through the
19 peephole, just trying to figure out what was happening on the
20 other side.

21 Q What did you see?

22 A Through the peephole I just saw, like, the flames going
23 from the south end of the Lawn north. And I just saw, like, a
24 continual stream of flames.

25 Q Were there people marching or walking? What did you see

D. D'Costa - Direct

1 in respect of the flames?

2 A I saw the people holding the flames marching up the Lawn.

3 Q So you didn't just see one person standing through the
4 peephole?

5 A No. It was a mass.

6 Q And where were the people in relation to your front door
7 that you were looking through?

8 A My door opened straight onto the Lawn. They were no more
9 than four yards in front of me. Just the sidewalk and then the
10 grass, and they were right on the grass.

11 Q Describe how you felt at that moment?

12 A I was terrified. As a Jewish person, hearing "Jews" --
13 MR. KOLENICH: Objection. Your Honor has ruled on
14 this, the emotional impact of third parties, as part of
15 pretrial.

16 MR. LEVINE: Your Honor didn't rule on this. This
17 witness --

18 THE COURT: Not with regard -- she's not a plaintiff
19 in the case, right?

20 MR. LEVINE: She's not, Your Honor. But she's
21 describing for herself the events of August 11th.

22 THE COURT: All right. She's just telling her
23 present-sense impression.

24 MR. LEVINE: Exactly.

25 THE COURT: So that's fine.

D. D'Costa - Direct

1 THE WITNESS: It was terrifying. I was scared for my
2 life. My chest, like, started tightening up, and there was
3 ringing in my ears. I was kind of in shock of what was
4 happening and trying to process what was going on, but I was
5 terrified.

6 BY MR. LEVINE:

7 Q Could you tell before opening the door how many people
8 were outside?

9 A I couldn't tell. It was just a large crowd.

10 Q How long were you looking through the peephole?

11 A I was looking through the peephole for a good minute or
12 so.

13 Q What happened next?

14 A I got a knock on my door from Wendy Baucom.

15 Q What did the person on the other side of the door say?

16 A She said, "Diane, Diane, Diane" --

17 MR. KOLENICH: Hearsay.

18 MR. LEVINE: It's not offered for the truth, Your
19 Honor, just to explain what she --

20 THE COURT: It's not hearsay. Go ahead.

21 THE WITNESS: She said, "Diane, Diane, Diane, come
22 with me."

23 BY MR. LEVINE:

24 Q And did you open the door?

25 A I did open the door for her.

D. D'Costa - Direct

1 Q Did she come in your room?

2 A She did.

3 Q And what did she say to you?

4 A She told me to come to her pavilion.

5 MR. KOLENICH: Objection, hearsay.

6 MR. LEVINE: Not offered for the truth, Your Honor,
7 just to explain what she did.

8 THE COURT: It's just explaining why -- I assume she
9 did something else. Go ahead.

10 BY MS. DUNN:

11 Q And who is Dean Baucom?

12 A Dean Baucom is the professor who lived closest to me in
13 Pavilion X.

14 Q And what did you do next?

15 A I flipped over a painting that had, like, Israeli flags on
16 it. I took off my Hamsa necklace and my Shema ring and threw
17 it away and grabbed a sweater to leave.

18 Q What is a Hamsa necklace?

19 A It's a symbol in Judaism. It's like an upside down hand
20 with, like, a protection from evil, with the evil eye.

21 Q What is a Shema -- that's S-H-E-M-A. What is a Shema
22 ring?

23 A It's a --

24 MR. KOLENICH: Your Honor, I apologize for objecting
25 again. Could I request a continuing objection to any

D. D'Costa - Direct

1 description of the emotional impact on this witness pursuant to
2 my previous objection -- I understand it's overruled, but so
3 that I don't have to keep interrupting Mr. Levine?

4 THE COURT: Yes.

5 BY MS. DUNN:

6 Q What is a Shema ring?

7 A The Shema is a prayer in Judaism. It's like the Hebrew
8 letters in a circle just on the ring.

9 Q Are you wearing it today?

10 A Yeah. It's this ring.

11 Q Why did you cover these items?

12 A I was hearing "Jews will not replace us" outside of my
13 door with people holding flames, and I was scared that if they
14 knew that I was Jewish or if there was any identifier of me
15 being Jewish, that I would have a threat to my personal safety
16 and my room would be a threat or a target.

17 Q Did you leave with Dean Baucom's wife?

18 A I did.

19 Q And when you got outside your dorm room, what did you see
20 immediately?

21 A I could see the mass of people carrying flames, walking,
22 marching towards the Rotunda.

23 I remember seeing a swastika tattooed to someone's arm.

24 And I just saw them carrying the torches, marching towards
25 the Rotunda.

D. D'Costa - Direct

1 Q And what did you hear?

2 A They were still chanting the "Jews will not replace us."

3 Q Where did you go?

4 A I went to Dean Baucom's pavilion, Pavilion X.

5 Q And when you got into Dean Baucom's pavilion, where did
6 you go?

7 A I went to the second-floor balcony that overlooks the
8 Lawn.

9 Q And was that just up one floor?

10 A Yeah. It's the...

11 Q Did you take any video while you were up on the balcony?

12 A I did.

13 MR. LEVINE: Can we please show the witness
14 Plaintiffs' Exhibit 323?

15 (Plaintiffs' Exhibit 323 marked.)

16 BY MR. LEVINE:

17 Q And, without playing it for the jury, Ms. D'Costa, could
18 you identify it?

19 (Video playing.)

20 THE WITNESS: Yeah, that's the Snapchat video that I
21 took.

22 MR. LEVINE: Your Honor, we offer Plaintiffs'
23 Exhibit 323.

24 THE COURT: Be admitted.

25 (Plaintiffs' Exhibit 323 admitted.)

D. D'Costa - Direct

1 MR. LEVINE: And we ask that it be published for the
2 jury.

3 (Video playing.)

4 BY MR. LEVINE:

5 Q Ms. D'Costa, you took that video?

6 A I did.

7 Q And how did you make the video in its current form?

8 A I recorded it on Snapchat and then I used the Geofilter
9 that came up for the Lawn to put, like, "The Lawn" at the
10 bottom. And then I typed the words over top.

11 Q So the words, "From outside my door, I have no words,"
12 those are your words?

13 A Yes.

14 Q And you typed them at the time?

15 A Yes.

16 Q How did you feel looking down at the march from the
17 balcony?

18 A It was scary. It was intense. I was shocked. The Lawn
19 is, like, a very important part to UVA. And so it was
20 terrifying and scary. And then to hear that as a Jewish
21 person, I was just kind of in shock and in fear of what was
22 happening.

23 Q Where were the marchers going that you were watching?

24 A They came from the south end of the Lawn. It almost
25 looked like a river of, like, flames. So it was, like, from

D. D'Costa - Direct

1 the south end of the Lawn marching up towards the Rotunda. And
2 I could see some folks coming from the alleyways of the Lawn
3 joining into the crowd marching towards the Rotunda.

4 Q Now, was the Rotunda, or is the Rotunda elevated from the
5 Lawn itself?

6 A Yeah. There are stairs that lead up to the Rotunda on
7 either side.

8 Q And what's on the other side of the Rotunda down the
9 stairs?

10 A On the north end of the Rotunda is the Jefferson statue
11 on, like, the plaza, but it's down past on the north end.

12 Q So can -- from the balcony of the Pavilion, could you see
13 down the stairs on the other side of the Rotunda?

14 A No.

15 Q Could you see the Thomas Jefferson statue?

16 A No.

17 Q Now, did there come a time when the marchers were -- and
18 the torches were out of your view?

19 A Yes.

20 Q What did you do after they left the Lawn?

21 A I went back inside Pavilion X.

22 Q And did you stay at Dean Baucom's house after that?

23 A Just for like 10, 15 minutes.

24 Q Did you go back and stay in your room that night?

25 A I did not. I didn't want to be anywhere near the Lawn

D. D'Costa - Direct

1 that night.

2 Q What did you do next?

3 A My friend, who lives in Charlottesville, texted me. And
4 he said, you can stay at my parents' house in Charlottesville,
5 and I gladly took him up on that offer.

6 Q So did there come a time when you left the Lawn to meet
7 your friend?

8 A I did.

9 Q How did that happen?

10 A He pulled up in the alleyway right next to Pavilion X, and
11 I, like, ran out the back of the Pavilion straight to his car.
12 It was like I was fleeing my house and it, like, was wild
13 because I have memories of my family telling me stories of my
14 great-grandmother fleeing Poland. And it felt like fleeing my
15 home from Nazis, but on the Lawn.

16 Q What did you do the next morning?

17 A I did not get much sleep at all that night. I had
18 breakfast. My friend dropped me back off at my Lawn room. I
19 took a quick nap and I woke up to, like, alerts of state of
20 emergency, programming canceled. So I drove straight back to
21 Maryland.

22 Q Did you end up returning to UVA for senior year?

23 A I did.

24 Q Now, could you explain to the jury how you physically felt
25 over the next several days after August 11th?

D. D'Costa - Cross

1 THE COURT: I think this -- she's adequately
2 explained what happened and the jury -- I think it gets
3 confusing to go into --

4 BY MR. LEVINE:

5 Q Well, can you then just describe for the jury what you
6 witnessed Friday night.

7 A I witnessed an overt act of antisemitism. I saw --

8 THE COURT: I wait, an overt -- you can describe what
9 you saw, but don't characterize it.

10 THE WITNESS: I saw a mass of people carrying lit
11 torches chanting "Jews will not replace us," and I was very
12 confused as to why they were there. The Robert E. Lee statue
13 is why I heard them coming. And I don't know what Jews have to
14 do with Robert E. Lee. And it was the most victim -- I was
15 beyond words seeing a mass of people chanting "Jews will not
16 replace us" with lit torches outside of my front door.

17 MR. LEVINE: No further questions, Your Honor.

18 THE COURT: All right.

19 MR. KOLENICH: No questions for this witness, Your
20 Honor.

21 MR. CANTWELL: I have some questions, thanks.

22 MR. JONES: No questions from me.

23 MR. CANTWELL: Pardon me just a second. My laptop
24 logged me out for some reason.

25 CROSS-EXAMINATION

D. D'Costa - Cross

1 BY MR. CANTWELL:

2 Q Ms. D'Costa, you moved into UVA on August 11th?

3 A For my fourth year, yes.

4 Q For your fourth year, you were returning to UVA. You had
5 been on campus for some period of time before that?

6 A My first, second and third year. I left for the summer
7 and came back.

8 Q You were coming back.

9 Okay. And so you then -- you had already known as you
10 were moving in about the August 12th event, you said, right?

11 A I heard that something was happening August 12th. I
12 didn't know the scale. I didn't know anything else other than
13 that something was going to happen on the 12th.

14 Q Prior to the arrival of the men with the torches, somebody
15 told you that something was going to happen that night on UVA
16 campus?

17 A We didn't know if for sure people were coming to the Lawn.
18 It was "there is a possibility that they might come." I didn't
19 know any information other than that.

20 Q Who is "we" in that sentence?

21 A We being residents who moved in to the Lawn on that day.

22 Q Could you tell me the names of those residents, please?

23 A The students?

24 Q The students who knew that the torch-bearers were coming?

25 MR. LEVINE: Objection, Your Honor. Lack of

D. D'Costa - Cross

1 relevance.

2 MR. CANTWELL: Judge, the torch march, per the
3 plaintiffs' own opening statement, was supposed to be a secret
4 event. And somehow all these people know about it who are now
5 making all these statements in court. And I want to know who
6 infiltrated our communications and confronted us and attacked
7 us at the Thomas Jefferson statue and then blamed us for that
8 violence.

9 MR. LEVINE: Your Honor, object to Mr. Cantwell's
10 speech to the jury. Press the relevance objection.

11 THE COURT: Overruled. Who told you?

12 THE WITNESS: The senior resident of the Lawn at the
13 time, who got the information from the deans, who saw the
14 gathering happening at Nameless Field. From my understanding
15 of how they got that information, once the torches were being
16 lit or people were organizing around Nameless Field, the deans
17 told the senior resident on the Lawn, who told me.

18 BY MR. CANTWELL:

19 Q Okay. I'm not familiar with the structure here, so if I
20 could go through this with you. The senior resident of the
21 Lawn, did you say?

22 A They're like the RA for the Lawn, the resident advisor,
23 the student who is in charge of the other students.

24 Q And it was your understanding that the senior resident of
25 the Lawn had heard this from the dean?

D. D'Costa - Cross

1 A The dean of students, or I don't know -- I frankly do not
2 know. UVA administration at some point.

3 Q From the administration. Okay.

4 Are you familiar with a website called itsgoingdown.org?

5 A No.

6 Q Are you familiar with a website called Unicorn Riot?

7 A No.

8 Q Do you know who Emily Gorcenski is?

9 A No.

10 Q Are you a member of any activist groups?

11 A No.

12 MR. CANTWELL: I'm showing you Plaintiffs' Exhibit
13 323. Could we show this again to the jury, please. I think
14 this was just put into evidence.

15 I'm sorry. I don't have my screen plugged in here.
16 I apologize.

17 BY MR. CANTWELL:

18 Q So you were in your -- is it your dorm?

19 A It's a Lawn room, but yes, a dorm room.

20 Q Lawn room is the -- Lawn room, fair to say, is a
21 UVA-specific term for the dormitory where you were staying?

22 A Yes.

23 Q Okay. And how far was that from Pavilion X?

24 A Just two doors down.

25 Q Oh, just two doors down?

D. D'Costa - Cross

1 A Like the balcony stretches over the Lawn rooms and
2 Pavilion X is two doors from my room.

3 Q And you said that you were inside of your dorm and you had
4 some kind of -- I'm paraphrasing -- Jewish symbolism within the
5 apartment there?

6 A Yes.

7 Q And you turned this down inside of the place?

8 A I flipped my painting and I removed my jewelry.

9 Q Okay. And you did that to go two doors down?

10 A Yes, before I left my room.

11 Q And did you have to go outside of the building to get two
12 doors down?

13 A Yes. On the sidewalk.

14 Q So you hid all your Jewish symbols inside your apartment
15 and you went outside, and then you went two doors down?

16 A Yes.

17 Q And from two doors down, then you went up to the second
18 story?

19 A Yes.

20 Q And that's where you shot this video?

21 A From the balcony, yes.

22 Q All right. I'm going to play this video.

23 (Video playing.)

24 Now, did I hear you correctly, did you say you saw a
25 swastika tattoo on a man's arm?

D. D'Costa - Cross

1 A When I was leaving my door. So when I opened my door to
2 walk out with Wendy Baucom, the person closest to me had a
3 swastika.

4 Q So it seems to me from this video that the people that
5 we're talking about are pretty far from Pavilion X. Is that
6 fair to say?

7 A No. This is from the balcony, this is overlooking it,
8 like a bird's eye view. When I saw that, they were not even me
9 to this table that I saw people marching in front of me as I
10 was leaving.

11 MR. LEVINE: The witness is describing about 5 feet,
12 Your Honor.

13 THE COURT: She said 12 earlier. But let her
14 testify.

15 BY MR. CANTWELL:

16 Q I'm sorry. So you're saying that somewhere in the range
17 of 4 to 12 feet was the distance between you and these people
18 with the torches?

19 A Yes.

20 Q The whole of the people; it wasn't some stray person that
21 got away from the crowd?

22 A The mass of the crowd was walking up the grass of the
23 Lawn, which was directly in front of my door. This video is
24 from the balcony, right atop my room.

25 Q The balcony on the second floor?

D. D'Costa - Cross

1 A There is one floor and then, yes, the second floor.

2 Q And so from the second floor, these specks of light off in
3 the distance, are you telling me that these are -- I mean, you
4 might be some number of feet above them, but you're saying this
5 is about 12 feet in front of the building?

6 A In front of me when I was leaving my Lawn room. So when I
7 was leaving my Lawn room, they were right outside the grass.
8 There is a walkway and then there is the grass. I saw them in
9 front of me when they were in front of the grass, just a couple
10 of yards away.

11 Q If that's the case, why would you leave the apartment?

12 A There's no bathroom in the Lawn room. I was by myself.
13 And my neighbor told me to come with her so that I was safe
14 with her, rather than by myself in a room without a bathroom,
15 without a back door. The only way out was towards this crowd
16 of people marching with flames.

17 Q I'm sorry, the only way to go to the bathroom is to go
18 outside?

19 A Yes.

20 Q Are you sure?

21 A These were built in 1817. We walk down the Lawn, go
22 behind and, like, go to the bathroom. It's the historic part
23 of grounds.

24 Q All right. Well, okay. Wow. That's harrowing.

25 All right. And so at the end of -- towards the end of

D. D'Costa - Cross

1 your testimony, I think that you declined to finish a sentence.
2 You said something to the effect of "it was the most victim,"
3 and then stopped. What were you going to say?

4 A It was the most traumatized I ever felt as a Jewish
5 person. I was scared for my life. I thought that I was going
6 to die if people knew who I was. I had reason to believe with
7 lit flames in front of me that these people were angry, that
8 they were hating who I am. And so it is the most traumatized I
9 have ever been as a Jewish person, having seen a mass of people
10 with lit torches chanting "Jews will not replace us."

11 And so I did feel victimized as a Jewish person living in
12 my home, being victim to this happening in a place that's very
13 important to me.

14 Q Right. Okay. And so if they had been chanting "students
15 against Jewish supremacy," would you have felt better about it?

16 A I don't think I would have felt good with anyone lighting
17 flames in front of my door.

18 MR. CANTWELL: No further questions. Thank you.

19 MR. CAMPBELL: No questions, Your Honor.

20 THE COURT: Anyone?

21 MR. SPENCER: No questions.

22 THE COURT: All right.

23 Members of the jury, this witness was allowed to
24 describe the events as they were taking place on the Lawn. You
25 understand she's not a plaintiff in the case and you shouldn't

D. D'Costa - Cross

1 take her feelings and project them onto the plaintiffs. But
2 she was allowed to testify as to what she saw, and she used
3 rather conclusory terms about, you know, horrific and -- I
4 don't know if she said that. But it was -- they are allowed to
5 explain the experience that night, the event, the atmosphere
6 surrounding it and that type of thing. She's not a plaintiff,
7 as I said. But she was only allowed to testify as to what she
8 saw and the feelings and explain the event.

9 We're going to recess now until 1:30. Do not discuss
10 the case with anyone. Do not allow anyone to discuss it with
11 you. Do not remain within hearing of anyone discussing the
12 case.

13 **(Jury out, 12:26 p.m.)**

14 (Recess.)

15 THE COURT: Just a minute. I want to mention a
16 couple of things before the jury comes back.

17 I'll just say this about the video exhibit that we
18 had come up earlier. Before referring to any exhibit, whether
19 it's been admitted into evidence already or not, please refer
20 to it as a -- by number. In any event, a witness -- this is
21 going forward. A witness may only testify concerning contents
22 of a video based on personal knowledge of the matter, such as
23 first having the witness identify themselves in the witness --
24 in the video, and further eliciting a response that the video
25 fairly represents the situation depicted. As I stated at the

D. D'Costa - Cross

1 outset of court today, the Court encourages parties to discuss
2 ahead of time any specific video exhibits sought to be
3 introduced on cross before the cross-examination itself.

4 With respect to that particular video, did you show
5 that, Mr. Kolenich? I couldn't tell at the end whether you did
6 or not.

7 MR. KOLENICH: I don't think I tried to put a video
8 in, Your Honor.

9 MR. JONES: It was me. It was Mr. Jones.

10 THE COURT: Oh, I'm sorry. Mr. Jones. I'm sorry.
11 Did you show that video?

12 MR. JONES: I actually don't know whether it was
13 admitted or not. I think it was.

14 THE COURT: Was it played to the jury?

15 THE CLERK: It was.

16 THE COURT: Okay. All right. But I allowed that in.
17 But it's questionable whether the proper foundation was laid in
18 that case.

19 I think -- Mr. Kolenich, did you show that to a
20 witness before? I had seen that video before.

21 MR. KOLENICH: It may have been a cross after I asked
22 some questions. I'm fairly certain I haven't attempted to
23 introduce any exhibits or publish any to this point.

24 THE COURT: Did you ask Mr. Willis about it?

25 MR. KOLENICH: I don't recall crossing Mr. Willis,

D. D'Costa - Cross

1 because I was absent, Your Honor, on Monday.

2 MS. DUNN: Your Honor, we don't believe this was
3 discussed, the video, or admitted, either.

4 One concern we have that we discussed over the break
5 is that defense counsel made a huge deal about plaintiffs not
6 wanting the jury to see the video. That was not our objection.
7 We objected because it was not proper foundation. And we would
8 ask the Court to instruct the jury that it was not proper
9 foundation.

10 It was, I think, very prejudicial. Every defense
11 counsel said, let them see all the evidence.

12 THE COURT: Okay.

13 MS. DUNN: And that's not our point. And I think it
14 was very, very unfortunate that that happened.

15 THE COURT: Okay. If you would suggest a curative
16 instruction, I would be happy to give one.

17 MS. DUNN: Thank you, Your Honor. We will write
18 something right now. We appreciate it.

19 THE COURT: Okay.

20 MS. DUNN: Your Honor, we will write an instruction,
21 but just because we're at the beginning of this stage, two more
22 things.

23 One is it's improper to make comments like that in
24 front of the jury. So we will think about what we can say that
25 won't compound the problem.

D. D'Costa - Cross

1 A second problem that we are having is, as you saw,
2 the defendants in their crosses -- or, I'm sorry, in their
3 directs, which are not supposed to be leading, are testifying,
4 including *pro se* defendants who are percipient witnesses.

5 These are both very large problems rights now.

6 THE COURT: All right. It's also a problem sometimes
7 with you.

8 MS. DUNN: I understand, Your Honor.

9 THE COURT: Okay. So that applies across the board.

10 All right. And then I wanted to mention something
11 with respect to the last witness, Ms. D'Costa's testimony. To
12 the extent she was describing the events that she witnessed and
13 her perception of the event, the Court clarified -- attempted
14 to clarify for the jury that the testimony -- that she is not a
15 plaintiff and that any emotional impact she may have had
16 shouldn't be projected onto the plaintiffs.

17 The emotional impact of these events on third parties
18 came up in a form in the motion in limine in Docket 1148. In
19 plaintiffs' opposition, they stated: "Plaintiffs do not seek
20 recovery for the emotional distress of non-parties and do not
21 intend to argue or present evidence on that non-issue."

22 So I think that's where Mr. Kolenich was coming from
23 when he objects to -- he objected to that testimony.

24 MR. LEVINE: Your Honor, Alan Levine for the
25 plaintiffs. I read Your Honor's colloquy with Mr. Kolenich

D. D'Costa - Cross

1 during the pretrial conference, and the colloquy and the
2 Court's ruling related to a witness testifying about the
3 emotional experience of a plaintiff, and we said at the time we
4 wouldn't be calling any relative or mother to talk about the
5 personal experience of a plaintiff. And I was very careful in
6 directing Ms. D'Costa's direct examination to only her personal
7 experience of what she saw, what she heard, and what she did.

8 THE COURT: All right. But you said plaintiffs did
9 not --

10 MR. LEVINE: And we're not seeking any recovery --

11 THE COURT: Okay. But no more witnesses telling how
12 terrified -- no more non-parties saying how terrified they
13 were.

14 MR. LEVINE: Your Honor, we don't have any other such
15 witness.

16 THE COURT: Okay.

17 Yes?

18 MR. JONES: Your Honor, if I can also just make a
19 point. Yesterday during Matt Heimbach's direct examination,
20 the plaintiffs introduced the DeAndre Harris beating video, and
21 I made an objection about lack of foundation and authenticity
22 because Matt Heimbach did not personally see that incident.
23 And the Court allowed it in because it had been filed with the
24 Court and not objected to previously. So that's why --

25 THE COURT: What was the difference in those two?

D. D'Costa - Cross

1 MS. DUNN: The difference is we showed Mr. Heimbach
2 the video because he had identified shields and an individual
3 that were in that video. We asked him only questions about the
4 shields and what he would recognize in the video.

5 The video will come in later anyway through a
6 different witness who was physically there, and we made that
7 clear at the time.

8 MR. JONES: It was admitted.

9 THE COURT: All right. Anything else on that?

10 MR. JONES: No, Your Honor. The same thing with all
11 those --

12 THE COURT: Anyway, going forward, I hope we know --

13 MR. JONES: That's clear, Your Honor. And I
14 appreciate that. But I will object to a curative instruction,
15 because I think it's happened to both sides.

16 MS. DUNN: Your Honor, we disagree with that, and we
17 are writing up the curative instruction.

18 THE COURT: Okay.

19 MS. DUNN: Look, just to explain, we understand that
20 lawyer questions are not evidence. And I think one issue
21 that's been happening here is Your Honor has said that to the
22 jury, and that certainly applies to my questions and Mr. Jones
23 and the other counsel.

24 We are having an issue that when Mr. Spencer and
25 Mr. Cantwell ask their questions in a leading and argumentative

D. D'Costa - Cross

1 way, they are percipient witnesses. So it's different. And we
2 ask that this gets sorted out, because it's very prejudicial,
3 what's happening.

4 THE COURT: You've argued that point, and I think
5 it's well-taken. We all understand.

6 Anyway, back to Ms. D'Costa. The emotional impact of
7 these events on third parties came in in the form of a motion
8 in limine. In plaintiffs' opposition, they stated:

9 "Plaintiffs do not seek recovery for emotional distress for
10 non-parties and do not intend to argue or present evidence on
11 that non-issue." In oral argument on this issue, the Court
12 held that it would be inadmissible if plaintiffs sought to have
13 a third party, such as plaintiffs' mother, testify about her
14 daughter's injury and experience. The oral order ended there
15 after limiting non-party testimony consistent therewith.

16 The Court allowed the testimony of Ms. D'Costa and
17 found her description of the relevant events and, to the extent
18 there was any prejudice to defendants arising therefrom, such
19 prejudice was not undue prejudice, since it was relevant to the
20 issue of animus and people's perception of defendants' acts,
21 and much of the witness's testimony to the effect was elicited
22 by defendant -- well, in particular, Mr. Cantwell in cross.

23 And I tried to tell the jury, and I think -- I said
24 it was a present-sense impression, which is not exactly the
25 right term, why something like that is admissible. I think

D. D'Costa - Cross

1 it's more in terms of -- of a lay opinion, where a lay witness
2 might express an opinion about -- on what they saw in
3 describing what they saw. And they, in general, are allowed to
4 explain why they -- you know, for the lack of -- they use some
5 conclusory language, for the lack of a better term. But the
6 testimony explains how they came to whatever opinion they had.
7 They're not general experts.

8 Anyway, since that's not going to come up again,
9 we'll proceed.

10 Is that video, the one we're talking about, is that
11 likely to come up again? I know I saw it before. Somebody
12 pointed out the big gentleman in the --

13 MR. JONES: I don't at present have any plans to.

14 THE COURT: Can we bring in the jury and do that
15 later?

16 MS. KAPLAN: Your Honor, would you like us to bring
17 the witness in?

18 THE COURT: Excuse me? You would like to have -- who
19 is the next witness?

20 MS. KAPLAN: Professor Deborah Lipstadt.

21 THE COURT: Okay. That's the expert?

22 MS. KAPLAN: Yes. I'll just note for the record,
23 because she's an expert, she will not be testifying as a
24 percipient witness, obviously, about evidence in this case.

25 THE COURT: You can go ahead and call her.

D. D'Costa - Cross

1 MS. DUNN: Your Honor, may we hand this up for the
2 Court's --

3 THE COURT: Put it on the screen so everybody can see
4 it.

5 MS. KAPLAN: Plaintiffs call Professor Deborah
6 Lipstadt.

7 (Discussion off the record.)

8 MS. DUNN: Can you see the whole thing, Your Honor?

9 THE COURT: Was that -- it wasn't the last witness,
10 but --

11 MS. DUNN: Oh, I apologize. You're right. It was
12 Mr. Heimbach.

13 THE COURT: Yes. Is that it?

14 MR. JONES: Your Honor, again, I would object to
15 that. I think we had the same problem with Matthew Heimbach.
16 Just because he recognizes a shield in a video does not make a
17 video admissible and able to come in through him.

18 THE COURT: Well, it may -- I mean, he can identify
19 people in it. At least -- I mean, in this instance
20 Mr. Heimbach did not -- as I recall, he didn't say that he saw
21 anyone.

22 All right. Call the jury back.

23 **(Jury in, 1:52 p.m.)**

24 THE COURT: Be seated.

25 I'm going to read something.

D. Lipstadt - Direct

1 Members of the jury, back when Mr. Heimbach was
2 testifying, defense counsel asked to admit a video and
3 plaintiffs objected on foundation grounds. That objection was
4 well-founded.

5 Witnesses must testify to their personal knowledge.

6 The Court instructs you to disregard any comments by
7 defense counsel about plaintiffs' objections. Lawyers on both
8 sides will make objections, and that is proper. Objections are
9 not evidence in the case.

10 Anything else?

11 All right. You may proceed.

12 DEBORAH LIPSTADT, PH.D., CALLED BY THE PLAINTIFFS, SWORN

13 DIRECT EXAMINATION

14 BY MS. KAPLAN:

15 Q Professor Lipstadt, what is your current job?

16 A I'm currently the Dorot Professor of Modern Jewish History
17 and Holocaust Studies at Emory University in Atlanta, Georgia.

18 Q What is your general academic focus as a scholar?

19 A As a scholar, my focus is on the history of the Holocaust
20 and on contemporary manifestations of antisemitism.

21 Q And for how long have you been teaching, Professor, at the
22 university level?

23 A At the university level, since 1975.

24 Q And just briefly, what's your educational background?

25 A My educational background is I attended the City College

D. Lipstadt - Direct

1 of New York, part of the City University of New York, in New
2 York, and I studied for two years at the Hebrew University in
3 Jerusalem, and then got my MA and my Ph.D. from Brandeis
4 University.

5 Q Thank you for reminding me, Professor, you used to live in
6 New York. I currently live in New York, and we both have a
7 tendency to speak too quickly, so let's try to -- for both of
8 us, let's have a pact that we try to speak more slowly.

9 A I've spent a lot of years in Atlanta, so I'm learning to
10 slow down.

11 Q Professor, have you written any books as part of your
12 scholarship?

13 A I have. My first book was called *Beyond Belief: The*
14 *American Press and The Coming of The Holocaust*. And it
15 attempted to answer a question a student asked me in class:
16 What could the public have known -- not what the government or
17 State Department officials, but what could the public have
18 known during the Holocaust? So that book dealt with the level
19 of information that was in newspapers.

20 My second book was a book exploring the phenomenon of
21 Holocaust denial. It was called *Denying the Holocaust: The*
22 *Growing Assault on Truth and Memory*.

23 And my third book was a book called *History on Trial: My*
24 *Day in Court with a Holocaust Denier*, because my second book
25 precipitated a libel suit against me, and the third book was

D. Lipstadt - Direct

1 the story of that suit.

2 My fourth book was on the Eichmann trial in 1961 in
3 Jerusalem. Adolf Eichmann was one of the chief operating
4 officers of the Holocaust and he was captured by the Israelis
5 and put on trial in Jerusalem in the early '60s.

6 And then after that I wrote a book on the Holocaust in
7 American culture, post-war, how through movies, through plays,
8 radio, books, how the American public began to understand and
9 see the Holocaust.

10 And the final book that I've written came out about a year
11 and a half ago. It's called *Antisemitism: Here and Now*. And
12 it deals with contemporary antisemitism.

13 Q In addition to all those books, Professor, have you -- do
14 you have occasion to write peer reviewed academic articles?

15 A I do. I write many peer reviewed academic articles.

16 Q Can you give the jury just a sense of what topics those --

17 A Generally all relating to these topics. Some of those
18 peer review articles become parts of books eventually, but
19 dealing with aspects of history of the Holocaust, aspects of
20 antisemitism, how I understand antisemitism, exploring
21 different facets of it.

22 Q And outside of the classroom at Emory, Professor, do you
23 have occasion to give public lectures?

24 A I give many public lectures. I'm what some people would
25 call a public intellectual. I'm very much committed to the

D. Lipstadt - Direct

1 notion that the academic work I do should be made as widely
2 available to the public at large, even if they're not
3 specialists or academics.

4 Q And again, just generally speaking, what was the general
5 topic of those lectures?

6 A Of those talks? In recent years, the general topic has
7 been a lot on contemporary antisemitism and Holocaust denial;
8 not exclusively, but in a great number.

9 Q Have you ever served before as an expert witness in any
10 case?

11 A I have not.

12 MS. KAPLAN: Your Honor, I offer Professor Lipstadt
13 under Rules 702 and 703 as an expert to testify, expert in
14 antisemitism, including the history, rhetoric, language, and
15 symbols of antisemitism.

16 THE COURT: All right. No objection. She may so
17 testify.

18 BY MS. KAPLAN:

19 Q Professor Lipstadt, were you asked by the plaintiffs in
20 this case to render an opinion?

21 A Yes.

22 Q And what were you asked to do?

23 A I was asked to examine the materials they sent to me,
24 which consisted of emails, podcasts, videos, written material,
25 and to look for evidence of antisemitism, Nazi symbolism,

D. Lipstadt - Direct

1 symbolism associated with the Third Reich, with the Hitler
2 regime, expressions of antisemitic ideology that were present
3 at the Unite the Right rally, march and rally, and around it.

4 Q And after reviewing those materials, Professor, did you
5 form an opinion?

6 A I did form an opinion.

7 Q And what was that opinion?

8 A That opinion -- I -- I don't -- I don't surprise easily.
9 I've been dealing with and writing about the Holocaust, one of
10 the worst genocides in human history, for many, many years. So
11 very few things surprise me, but I was taken aback by the --

12 THE COURT: Excuse me. I have to stop now.

13 She can testify as to her opinion, but any -- I think
14 any emotional reaction -- that's not --

15 BY MS. KAPLAN:

16 Q No emotional reaction, Professor. Just what was your
17 opinion.

18 A My opinion was -- my opinion was that there was a great
19 deal of overt antisemitism and adulation of the Third Reich
20 throughout the testimony -- throughout the evidence that I
21 looked at.

22 Q And, Professor Lipstadt, were you asked -- was that the
23 only opinion you were asked to give? Is that the only --

24 A That's my area of expertise, yes.

25 Q So were you asked to give an opinion about whether any of

D. Lipstadt - Direct

1 the defendants at all committed or were engaged in a conspiracy
2 to commit racially motivated violence?

3 A I was not. I have no expertise in that area.

4 Q And after doing the work that you just described,
5 Professor, did you write a report?

6 A I did.

7 MS. KAPLAN: Your Honor, may I have permission to
8 approach?

9 THE COURT: Yes.

10 BY MS. KAPLAN:

11 Q Professor Lipstadt, could you tell me, is that the report
12 that you wrote?

13 A Yes, it is.

14 Q Okay. That's not admissible, so I'm not seeking to admit
15 it into evidence, but I just want you to have it there in front
16 of you.

17 Now, let's back up for a moment, Professor.

18 How would you define the term "antisemitism"?

19 A Simply put, I would say it's Jew hatred; hatred of someone
20 not because of what they do or who they are, but because they
21 are a Jew, simply put. You know they're a Jew and you despise
22 them and you want -- maybe even want to do them harm. That
23 would be my simple definition.

24 Q How does antisemitism relate to the word "prejudice"?

25 A Antisemitism is a prejudice. If you think about the root

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1 of the word "prejudice," prejudice: I've made up my mind.
2 Don't confuse me with the facts. So that when you see a Jew,
3 you assume you know exactly what their financial status is, you
4 know what their morals are, you know what their politics are,
5 you know what their ethical behavior is, simply because they
6 are a Jew.

7 Q And in the course of your career, Professor, have you
8 formed a view as to whether there are certain common
9 stereotypes or characteristics of antisemitism?

10 A Yes. I would say there's a template. As is the case with
11 virtually every prejudice, there's a template of charges that
12 you find, if not all of them, a goodly number of them in --
13 present in antisemitic rhetoric or comments. And there would
14 be four, which I could enumerate.

15 Q If you could.

16 A One having to do with inordinate financial power: Jews
17 financially controlling banks, financially controlling the
18 economy.

19 One having to do with Jews being smart, but not smart in a
20 good way. Smart in a malicious, in an evil way. You know, I'd
21 use the word "clever"; conniving, crafty.

22 The third element I would say is Jews -- what I call --
23 what we might call in common parlance punching above their
24 weight: Small in number, not a whole lot of them, but somehow
25 managing to control a major portion of society.

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1 And the fourth element I would put in there is the Jew as
2 a devil, or the Jew has ancient roots. And it's migrated into
3 all different forms of antisemitism, in that the devil comes
4 and does his handiwork without your knowing it. You don't know
5 you've been impacted by the devil. You don't know you've been
6 harmed by the devil until the devil has come and gone. So the
7 Jew works surreptitiously, secretly, behind the scenes, to do
8 harm to the general population for their own benefit.

9 Q Professor Lipstadt, does antisemitism exist across the
10 political spectrum?

11 A Antisemitism is ubiquitous. It appears everywhere. It's
12 across the political spectrum, across religious spectrums. It
13 is -- in that sense, that's one of its unique qualities
14 compared to some other prejudices, that -- how it appears in so
15 many different forms.

16 Q And what about geography? Is antisemitism limited
17 geographically?

18 A Well, we've seen -- its worst impact, of course, we saw in
19 Europe because of World War II; but no, it can be all over the
20 place. It can be all over the place, even in places where
21 there are no Jews, because the idea is so old and has such long
22 legs, so to speak, that it pops up in -- and more than pops up,
23 but is rooted in other places.

24 Q You've mentioned the Holocaust a couple of times already,
25 Professor Lipstadt. If you could just explain to the jury,

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1 what was the Holocaust?

2 A The Holocaust was the state-sponsored genocide by the
3 Third Reich, by the Nazis, by the Hitler regime, which was in
4 power from 1933 to 1945. And it was a systematic plan to
5 annihilate all the Jews of Europe, and actually beyond as well.
6 And it didn't matter whether the Jew lived within German
7 territory or outside of German territory; it didn't matter if
8 they were of fighting age, or they were old and had to be
9 wheeled to the boxcars which took them to the gas chambers on a
10 gurney, or if they were a tiny baby. It just didn't matter.
11 If you were a Jew or if they considered you a Jew -- conversion
12 did not help you. Even if your parents converted, it did not
13 help you; they considered you a Jew. You were to be
14 annihilated.

15 If I can give one historical fact to demonstrate this:
16 After the Americans and the British, the Allies, the Canadians,
17 landed at Normandy in June of '44 and after the Americans
18 already were in Italy and moving north and they had liberated
19 Rome, and the Soviets were coming west -- so, in other words,
20 the vice was tightening around the Nazis; it was clear they
21 were not going to win -- they took ships and went to the island
22 of Rhodes, where there was an ancient Jewish community from the
23 time predating Jesus, easily 2,500, 3,000 years old, and they
24 took those Jews to Auschwitz and murdered them because there
25 was such a determination to do this.

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1 Q And excuse me, Professor, where is the Isle of Rhodes?

2 A The Isle of Rhodes in the Mediterranean.

3 Q There has been some discussion in this case already about
4 Hitler. What was Hitler's role with respect to the Holocaust?

5 A Hitler was the driving force. He was the -- if you could
6 say "genius," evil genius who conceived of it. He didn't plan
7 all of it. He didn't tell his underlings exactly how to carry
8 it out, but he was very clear that every Jew must be destroyed.

9 That isn't what he says initially, but it's very clear
10 initially, even before he comes into power, that he believes
11 that, for Germany to be the strongest nation possible, it must
12 eliminate the Jews, because the Jews are the source of all
13 evil.

14 Q And how many people, approximately, Professor, were killed
15 in the Holocaust?

16 A When we talk about the Holocaust, we're talking primarily
17 about the murder of the Jews, and that's approximately
18 six million, though recent research by Father Patrick Desbois,
19 a French priest, argues that it's even more than that.

20 But it was not just Jews who were killed. Gypsies, Roma,
21 Sinti were murdered. If you disagreed, if you were considered
22 a political opponent, you might be murdered.

23 And this is speculation, but as a historian, it's -- many
24 historians argue that, had the Germans won the war, they
25 probably would have murdered many, many people. They would

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1 have murdered religious leaders. They would have murdered
2 Slavs. They would -- and just left enough people to provide
3 them with food and to work for them. But all those other
4 actions could have waited until after the war. The only
5 systemized killing that they started even as the war was going
6 on was that of the Jews.

7 Q And, Professor Lipstadt, I think you mentioned the number
8 six million. How does that number relate to the overall Jewish
9 population in the world?

10 A One of every three. So if you were to take the Jewish
11 population on the eve of the Holocaust and count one, two,
12 three, one, two, three, they would have been murdered.

13 Q Now, you mentioned earlier, talking about your books, that
14 there was -- I think it was a defamation trial against you in
15 the United Kingdom?

16 A Yes, there was. In my book, "Denying the Holocaust: The
17 Growing Assault on Truth and Memory," I made brief reference, I
18 would say maybe 300 words, maybe not even that much, to a man
19 named David Irving, who was a writer, a writer of historical
20 works, who had become an overt Holocaust denier, denied that --
21 first he denied that Hitler had any role in the Holocaust, and
22 then afterwards he said there was no Holocaust. And I wrote
23 that he was a Holocaust denier and I argued that Holocaust
24 denial is a form of antisemitism.

25 He -- once the book was published in England -- it was

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1 bought and published by Penguin UK -- he sued me for libel
2 there, and he was able to do that because I had, quote unquote,
3 done business in the UK by having a book published there. It
4 was a very long trial of about ten weeks with a couple of
5 years' preparation before that. And we won overwhelmingly.
6 The judge talked about his antisemitism, his racism, his
7 hatred, his twisting of historical facts, how he would take a
8 truth and twist it, and that it was done deliberately. It
9 wasn't a mistake that might have happened in his work, but this
10 was a deliberate effort.

11 Q That leads me to my next question, Professor. Have you
12 ever heard the phrase "Holohoax"?

13 A Yes.

14 Q What does that mean?

15 A It's a crude way of Holocaust denial, that the Jews have
16 pulled this hoax on the world by claiming there was a
17 Holocaust. And of course it is so counter -- I mean, for
18 someone who believes in the Holohoax, or Holocaust denial, call
19 it whatever term you want, for them to be right, who -- I have
20 posed this question with my students: Who would have to be
21 wrong? Well, certainly all the survivors who tell their
22 stories and have given evidence. But not just them. All the
23 survivors, the Poles, the Russians, the Lithuanians who lived
24 in the towns and villages near the killing sites, near the
25 camps, who saw the trains going in day after day, coming out

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1 empty, who smelled the burning flesh, they would have to be
2 wrong.

3 The thousands of historians all over the world would
4 either have to have been duped or be in on the hoax. And then
5 finally the Germans themselves. There has never been a war
6 crimes trial for crimes against humanity, including the
7 Holocaust, where a Nazi war criminal has said it didn't happen.
8 They have said I didn't do it, or I had no choice, but never
9 that it didn't happen.

10 Q Professor, are you familiar with a book called *Mein Kampf*?

11 A Yes.

12 Q What is *Mein Kampf*?

13 A "Mein kampf" means my struggle. It's a book that Adolf
14 Hitler wrote when he was in detention after his aborted attempt
15 to overthrow the -- Weimar Democratic Germany. Germany had a
16 democracy between World War I and the Nazi rise to power. And
17 he wanted to do a putsch, an overthrow, a coup d'etat, a coup
18 against the government. And he was sentenced to approximately
19 two years in jail, and in very comfortable circumstances, he
20 wrote this book, "My Struggle."

21 Q And what does he say about Jews in the book?

22 A He talks about Jews as being not part of the Volk,
23 V-O-L-K, sort of the folk, the nation, that they are foreign to
24 it, that they are the source of all the troubles of Germany.
25 They and they alone are the backstabbers, the ones who stabbed

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1 Germany in the back and had it lose the war. If there's a
2 problem in Germany, they are the ones responsible for it.

3 Q Professor Lipstadt, are you familiar with the phrase
4 "Daily Stormer"?

5 A Yes.

6 Q What is that?

7 A It's a -- first of all, the title is a play on a newspaper
8 that appeared in Nazi Germany, *Der Stürmer*, which was
9 published. The publisher was a man named Julius Streicher, who
10 was one of the defendants on trial at the Nuremberg trials
11 after the war where the Allies, the British, the Americans,
12 French, etc, tried Nazi war criminals.

13 And it was replete with antisemitism. The current
14 rendition is also replete with antisemitism, but instead of
15 being called -- it's clear that it's a play on the words "Der
16 *Stürmer*," *The Daily Stormer*.

17 MS. KAPLAN: I'm going to ask Mr. Shepherd to put a
18 document that's already in evidence as Plaintiffs' Exhibit 2033
19 on the screen and ask him to turn to page 10.

20 BY MS. KAPLAN:

21 Q And I want to look at the paragraph that begins "Prime
22 directive: Always blame the Jews for everything." Do you see
23 that, Professor?

24 A Yes.

25 Q The first paragraph, well, you can read it out loud if you

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1 want. I want to hear your thoughts on that.

2 A "As Hitler says, people will become confused and
3 disheartened if they feel there are multiple enemies. As such,
4 all enemies should be combined into one enemy, which is the
5 Jews. This is pretty much objectively true anyway, but we want
6 to leave out any and all nuance."

7 Q And if you see above, the paragraph above the header,
8 Professor, there's a reference to *Mein Kampf*. Do the ideas
9 expressed in that paragraph that you just read, are they
10 reminiscent of *Mein Kampf*?

11 A They evoke, yes -- they are quite reminiscent of what's in
12 *Mein Kampf*.

13 Q Can you explain?

14 A That this was Hitler's -- he was, as I say, again, I'm
15 reluctant to call him a genius, but at the very least an evil
16 genius. And he understood very well how propaganda works. And
17 he understood that if you give people nuance and say, well,
18 this is the banks or this part was responsible for this -- this
19 suffering and this is responsible for another suffering, people
20 get confused.

21 But if you say to them, it's that one group, and you pick
22 a group which for millennia before that have often been blamed
23 for things, poisoning of wells when there was bubonic plague or
24 whatever it might have been -- people will be more ready to
25 accept it. You simplify. You simplify. Again, this wasn't

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1 just Hitler. It was Joseph Goebbels, the propaganda chief.

2 Take an idea, simplify it and repeat it and repeat it.

3 Q I want to skip the paragraph and I want you to look at the
4 paragraph that begins, "This basically includes blaming the
5 Jews for the behavior of other non-whites."

6 A "This basically includes blaming the Jews for the behavior
7 of other non-whites. Of course, it should not be that they are
8 innocent, but the message should always be that if we didn't
9 have the Jews, we could figure out how to deal with the
10 non-whites very easily."

11 Q Let me ask you a first question. I want to take it in
12 pieces. What does non-white mean?

13 A People -- today we would use the term "people of color,"
14 anyone who doesn't look like a white person. But that also
15 would include Jews. Jews are not considered whites by people
16 who write these kind of things.

17 Q And what is -- in terms of this kind of antisemitism,
18 what's the relationship between Jews and non-whites?

19 A Well, this -- here what is being said and what's being
20 argued and what this is evocative of is what I would call the
21 replacement theory, white genocide replacement theory, which
22 argues that Jews control other non-whites in an effort to
23 destroy white society, to destroy white national societies, to
24 destroy societies which have been primarily white,
25 European-rooted, etc, and that you blame -- if you feel they're

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1 non-whites or people think the non-whites are doing bad things,
2 blame the Jews for it.

3 MS. KAPLAN: You can take that down, Mr. Shepherd.

4 THE WITNESS: Blame the Jews for it, but the message
5 is that it is the Jews' fault.

6 BY MS. KAPLAN:

7 Q With respect to the United States, Professor Lipstadt,
8 what are the roots or the beginnings in the United States of
9 this idea of replacement theory?

10 A You begin to see it first in the late 1960s, early 1970s,
11 though it begins to gain more traction in the '90s, when there
12 are at least legal changes in the status, in America's
13 treatment of or legal status of particularly the black
14 population, the African American population, with the voting
15 law, the civil rights law, housing bills, anti-discriminatory
16 bills. And there were some -- some people who felt that -- who
17 were disturbed by this.

18 And they were convinced that the people of color could not
19 be doing this on their own. There had to be someone behind the
20 scenes manipulating it, making it happen. And that person --
21 in other words, the people of color were the puppets according
22 to this theory, and the Jew was the puppeteer. The Jew was the
23 one controlling this development.

24 Q Professor Lipstadt, are you aware of replacement theory
25 having any other names?

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1 A White genocide replacement theory, white replacement
2 theory, sometimes it's called white Christian replacement
3 theory.

4 Q Did you see -- in the materials you reviewed for this
5 case, Professor Lipstadt, did you see evidence of this idea of
6 replacement theory?

7 A I saw it in an overwhelming fashion, more than I expected
8 to see it. Certainly from the first night of the -- of the --
9 at the events at the University of Virginia with the march,
10 "Jews will not replace us," which confused many people because
11 they said what is that about? What are they talking about
12 there? But that's what that was about.

13 Q Let's watch just a very quick clip of that. Let's use,
14 Mr. Spalding -- and I apologize for calling you by the wrong
15 name. But let's watch a clip of Plaintiffs' 3474, 1:50 to
16 2:10, which is in evidence.

17 (Video playing.)

18 MS. KAPLAN: With the volume. Can we get volume?

19 (Video playing.)

20 BY MS. KAPLAN:

21 Q The jury has seen this a bunch of times so I think they
22 have the idea.

23 Professor Lipstadt, can you tell me whether the tiki
24 torches that you see in that video, whether they have any
25 resonance in terms of the issues you study?

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1 A They definitely have resonance. Though they've been used
2 in many places, and you could put one in your backyard to ward
3 off mosquitoes or something, but when used in a rally, with the
4 fire, with the marching, that is very much evocative, it
5 evokes, it reminds one who has studied this of the propaganda
6 techniques of the person I previously mentioned, Joseph
7 Goebbels, who was one of Hitler's closest associates.

8 Every time there was a major event, including on January
9 30th, 1933, the night Hitler became chancellor, he would
10 organize one of these marches, with fire, with the tiki
11 torches. And they -- for a historian who studies this period,
12 the connection is absolutely clear.

13 Q Professor, I'm going to ask Mr. Spalding to put up
14 Plaintiffs' Exhibit 1827, which was in evidence through
15 Mr. Heimbach, and I think the record reflects that it was
16 written by Mr. Heimbach. And I want to look at the first
17 paragraph, and ask you, focusing on that paragraph and
18 especially the last sentence, what that says to you about this
19 kind of ideology at play, at least in this document?

20 A Can I read it aloud?

21 Q Please.

22 A "The Unite the Right event in Charlottesville, Virginia,
23 on August 12th is going to be more than yet another successful
24 nationalist event for our rapidly growing and rapidly moving
25 cause. It's going to be a defining rally, proving that the

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1 populist movement is built on a solid bedrock of nationalism
2 and that America's nationalists have finally set aside their
3 bickering, second-guessing, and factionalism, to deliver a
4 clear and simple white nationalist message: We will not be
5 replaced."

6 So what I understood and what I see in that paragraph is
7 that this is going to be more than just a successful
8 nationalist rally, but it's going to be defining. It's going
9 to be change -- a defining moment, and it's going to prove that
10 the populist movement, this far right wing movement, is built
11 on a solid bedrock of nationalism. But it's to deliver a clear
12 and simple white nationalist message: We will not be replaced.

13 So it's not just nationalism, that we're going to be --
14 affirm Americans and affirm our American identity, which is
15 quite common and can be a very positive thing, but it is a
16 white nationalist message. And it is to some degree a call to
17 arms. "We will not be replaced." It's not just a rally to
18 make us feel good, to make us feel affirmed, we're strong in
19 number, but this is a call to battle. We will not be replaced.
20 If someone is out to replace you and I'm calling you to come
21 together, and what's on the -- what's in the cards is a
22 possible elimination of your group, you get the message. We
23 will not be replaced.

24 Q And again, who -- people who have this view, what do they
25 have in mind in terms of who will be doing the replacing?

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1 A Well, if they lose or if they don't succeed, the Jews will
2 do the replacing and they will use people of color to --
3 non-Christians to do their handiwork, but they will be doing
4 the controlling behind the scenes.

5 Q I want to go down to the second paragraph from the bottom.
6 And if Mr. Spalding could highlight that.

7 And if you could look at that paragraph, Professor, and
8 ask you whether there's anything in that paragraph that has any
9 one of those four characteristics that you spoke about earlier.

10 A "We need to scare these people, and the way to achieve
11 that is with numbers, discipline, and determination. We must
12 send a message to the Jewish oligarchs" -- money -- "and their
13 hordes of minions that we will not go silently into the night
14 as they desire. No, we will fight them. We will defeat them.
15 We will secure our people's destiny."

16 So first there's the overt connection to Jewish oligarchs,
17 Jewish oligarchs controlling, controlling our future,
18 controlling who we are --

19 Q Let me stop you for a second. What does oligarch mean?

20 A A fabulously wealthy person, and powerful because of their
21 wealth.

22 "We will not go silently into the night." Silently into
23 the night doesn't mean just -- it means to disappear, to
24 disintegrate, you're going to not be anymore, the end of your
25 existence.

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1 "No, we will fight them. We will secure our people's
2 destiny." When you put it with some of the other things I've
3 read, again, it's a call to arms. This is not come to an
4 important rally that will unite our parts and we'll be
5 stronger. But this is a call to arms. This is a call to
6 battle.

7 Q I'm going to ask Mr. Spalding to put up Plaintiffs'
8 Exhibit 2030, which I'll represent is a tweet from one of the
9 defendants in this case, Michael Hill.

10 It's not yet in evidence, Your Honor, but I promise you
11 that it will be through Mr. Hill.

12 (Plaintiffs' Exhibit 2030 marked.)

13 BY MS. KAPLAN:

14 Q Professor Lipstadt, again, talk about this idea of
15 replacement theory. Can you tell me how this tweet relates to
16 that?

17 A "If you want to defend the South and Western civilization
18 from the Jew and his dark-skinned allies, be at Charlottesville
19 on August 12."

20 So again, it builds on what -- or reaffirms strength, is
21 what I was saying earlier about the previous segments you had
22 me read, that this is not a rally just to strengthen our
23 movement. To defend the South and Western civilization,
24 Christian civilization, from the Jew and his dark-skinned
25 allies. In other words, the Jew controlling the allies, maybe

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1 working with them, but the Jews have control of these
2 dark-skinned allies -- be in Charlottesville on August 12th.

3 MS. KAPLAN: I'm going to ask Mr. Spalding to put up
4 Plaintiffs' Exhibit 3642.

5 (Plaintiffs' Exhibit 3642 marked.)

6 MS. KAPLAN: I'll represent to the Court that this is
7 a tweet -- the "NewGiantDad," Your Honor, is the Twitter handle
8 for Defendant James Fields.

9 BY MS. KAPLAN:

10 Q And I'm going to ask you, Professor Lipstadt, to read the
11 words under the tweet and tell me if you know what they are.

12 A "We must secure the existence of our people and a future
13 for white children." That's often called the 14 Words. You
14 often see the number 14 in white nationalist material, white
15 nationalist literature, etc, emails, publications. And this is
16 what it is. It's not, again, we must strengthen our movement,
17 but this is a battle to secure the existence of our people and
18 a future for the white children. In other words, if we don't
19 secure our existence, our children have no future. Again, a
20 call to arms.

21 MS. KAPLAN: Your Honor, if I may, I understand that
22 under the rules as we previously discussed that both the prior
23 exhibit, which is 2030, and the current exhibit, 3642, can be
24 shown to the jury subject to us getting them in, which I assure
25 Your Honor, as we discussed, we will.

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1 So I don't think the jury has seen either of those.

2 So Mr. Spalding, let's put up 2030.

3 THE CLERK: So you've moved for the admission?

4 MS. KAPLAN: No, I'm not. For an expert, you don't
5 have to. We will get them into evidence later.

6 THE COURT: All right.

7 BY MS. KAPLAN:

8 Q So now the jury has it. That's the tweet from Mr. Hill
9 that you were talking about?

10 A Uh-huh.

11 Q And then let's put up the tweet from Mr. Fields, which is
12 3642. I apologize for not noticing that earlier.

13 And those words -- is 3642 published?

14 Okay. And again we see the Twitter handle for Mr. Fields,
15 the NewGiantDad. And those words underneath it are posted
16 above the photo of Adolf Hitler and the bird, those are the 14
17 Words?

18 (Plaintiffs' Exhibit 3642 marked.)

19 A Correct.

20 Q Now, why do you think someone would associate the 14 Words
21 with Adolf Hitler?

22 A Why -- that statement?

23 Q Yes.

24 A Well, that's exactly what Hitler was saying. That's
25 exactly what he was arguing, what he was proposing, what he was

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1 promulgating in his book, *Mein Kampf*, and in everything he did
2 afterwards. That this is a war, not a war, just a war to win
3 territory, but this is a war of annihilation, either we
4 annihilate our enemies or they annihilate us.

5 And I think this speaks exactly to that, that there's no
6 living -- there's no doing it part way. We have to do it all
7 the way.

8 Q I'm going to now play again for both the witness and the
9 jury -- not yet in evidence but we're going to get it into
10 evidence later this afternoon -- a video, Plaintiffs'
11 Exhibit 207, of Defendant Robert "Azzmador" Ray giving a speech
12 after the Unite the Right rally in Charlottesville on August
13 12, 2017.

14 (Video playing.)

15 Now, Professor Lipstadt, given your expertise on the
16 history of antisemitism, can you please explain whether, and if
17 so, how these words relate to the kind of themes of
18 antisemitism that you've been discussing and that you talk
19 about in your report?

20 A Well, they certainly -- when they talk about drinking our
21 blood, that goes back to one of the very old antisemitic myths
22 of Jews using the blood of Christian children to prepare their
23 matzah, the unleavened bread they eat on Passover. And this
24 charge became so pernicious, so evil that you even had popes
25 saying this is not true. And bishops and cardinals saying this

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1 is not true. But it was something that did -- nonetheless, it
2 continues to exist, as we just heard.

3 Bury us in brown sludge, whether that -- that could have a
4 double meaning, brown sludge talking very distastefully and
5 disgustingly about people of color, but it also could mean Jews
6 causing disease, causing white people to suffer, one of the
7 charges in the Middle Ages. I mentioned it earlier, when there
8 was bubonic plague across Europe, caused by rats -- we know
9 that -- but they accused Jews of poisoning the wells because
10 you had a familiar enemy. When you said to people the rats
11 caused it, they looked -- everyone is dying because of the
12 rats? No. But when you say Jews poisoned the well, it fit
13 into their belief.

14 And again, the war of extermination. I don't know if that
15 was his exact term, but this is a war to the end.

16 Q I'm going to put up a document that came into evidence
17 yesterday, Professor Lipstadt. It's a post by Defendant
18 Heimbach. It's Plaintiffs' 2499.

19 And I would ask Mr. Spalding to highlight the one, two,
20 three, four, fifth -- oh, he's already done it -- post there
21 from Mr. Heimbach.

22 If you could read that and explain again for the jury how
23 and if so -- whether, and if so, how, the ideas expressed there
24 relate to your expertise as an expert in antisemitism?

25 A "The total destruction of Jewry is the only way to ensure

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1 that we will no longer be plagued by the eternal enemy of all
2 mankind."

3 So can I parse it sentence by sentence?

4 Q Please do.

5 A Okay. So the total destruction. So in other words we're
6 not just saying limit the Jews' power, but we're talking this
7 is almost Hitlerian language, the total destruction of Jewry is
8 the only way that we will ensure that we will no longer be
9 plagued by the eternal enemy of all mankind. So the Jew
10 becomes the enemy of everyone.

11 "If they are not destroyed in their entirety, they will
12 come back to attack and subvert all free people and nations."

13 So again, it's that idea that you have to bring to the gas
14 chamber the 91-year-old woman and you have to bring the little
15 baby born but a few days ago, because if either continues to
16 exist, you are in danger for your own existence.

17 "This is a total war because the Jews are waging a total
18 war against us. They want nothing less than the slavery of our
19 children and the destruction of our folks -- our folk. To do
20 anything less than wage a war of extermination against these
21 vermin would be a betrayal of our future generations."

22 The use of "vermin," very often it's a -- it's a trope,
23 it's a theme that you see, or a way of describing the Jew,
24 using the Jew, the Jew is vermin, the Jew is dirty, the Jew as
25 someone, a purveyor of disease. So the word vermin there is

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1 not I think happenstance.

2 "Would be a total betrayal of our future generations. We
3 did not start this war, but we will finish it, once and for
4 all."

5 So again, it picks up on the themes we've been seeing for
6 the past couple of minutes and a good portion of this time.
7 This is a total war. This is a war that must be fought to the
8 end. And it's not just in order for you to win that you wage
9 this war, but it's in order for you to survive. It's what
10 academics might call an existential war for your very
11 existence. This is for your existence, not for your being
12 stronger than your neighbors, not for getting the upper hand.
13 This is a war to the death because it's either you or them.

14 Q I want to touch on now briefly, Professor, this idea of
15 the Jew as the master puppeteer that you talked about earlier.

16 I'm going to ask Mr. Spalding to put up another document
17 that came into evidence through Mr. Heimbach yesterday,
18 Plaintiffs' 1824. It's a long document so I'm going to ask
19 Mr. Spalding to turn to page 52.

20 And let me ask you to begin with, have you heard the
21 expression "JQ"? "JQ," Professor?

22 A Oh, yes. The Jewish question, yeah, sure.

23 Q And I want you to look at the first two paragraphs, but
24 focusing more specifically -- no, I'm sorry, the second -- the
25 second and third paragraph, focusing specifically on the third

D. Lipstadt - Direct

1 paragraph. And I want you, if you could read that and explain,
2 parse it any way you want, whether that is relevant to this
3 idea of the Jew as the master puppeteer?

4 A "Jews do not only have a disproportionate control over
5 international finance, but the world media, the
6 military-industrial complex, and most social movements that
7 promote antisocial, anti-national values. You cannot be a
8 nationalist and truly work to save your people if you do not
9 identify and act against the Jew as our primary enemy."

10 It reiterates many of them, brings them together. The Jew
11 with his control -- disproportionate control over international
12 finance. And I want to just point out something here, which I
13 haven't done before. There may be a Jew who does something, a
14 Jew who is a chairwoman of a bank or chairman of a corporation,
15 but for this it becomes "the Jews," so that the Jew is always
16 seen in their entirety.

17 But the -- not only international finance, world media,
18 military-industrial complex, social movements, everything.
19 "You cannot be a nationalist and truly work to save your people
20 if you do not identify and act against the Jews as our primary
21 enemy."

22 So if you want to be a nationalist -- and I'll put in
23 there the word "white nationalist," to save your nation, don't
24 call yourself one unless you're identifying and acting against
25 the Jew as our primary enemy. I think it's quite unambiguous.

D. Lipstadt - Direct

1 Q And I want to go to the final paragraph there, and if you
2 could tell me whether that final paragraph, the one that
3 begins, "the Jew must be understood," if that expresses any of
4 the kind of core characteristics or stereotypes historically of
5 antisemitism?

6 A "The Jew must be understood to defeat them. And at their
7 core, they are the servants of chaos, destruction, and Satan
8 himself" -- Satan, of course, being another name for the devil,
9 as I said earlier.

10 "The Jews love to hide how many of them are involved in
11 the world-destroying" -- "in the world-destroying project of
12 globalism, capitalism, and communism, but the truth
13 eliminate -- illuminate them for the enemies that they are."

14 So once again, the Jew as controlling, the Jew as Satan,
15 the Jew as trying to control the whole world, capitalism and
16 communism. You know, I always thought those two were counter,
17 you know, at odds with each other. But they are enemies. And
18 in order to avoid this chaos, this destruction, we must destroy
19 them.

20 Q I want to turn now, Professor, to -- reference for Nazi
21 Germany or manifestations of Nazi Germany and Adolf Hitler.

22 And I'm going to ask Mr. Spalding to play a video that the
23 jury has already seen and is in evidence, Plaintiffs'
24 Exhibit 2514.

25 (Video playing.)

D. Lipstadt - Direct

1 What's going on in that video?

2 A "Sieg Heil" was called in Germany the Hitler gruß, or the
3 Hitler greeting. Sometimes it was "Heil Hitler"; sometimes it
4 was "Sieg Heil." It means "Hail victory." And it was directly
5 associated with the Third Reich, with the Hitler regime, so
6 much so that it became outlawed in Germany after the war.

7 But the only place -- there's some symbols that I found
8 that are very much associated with the Nazis, with the fascists
9 during World War II. But they're also -- we can find them in
10 other places. This is the only place we can find "Sieg Heil,"
11 "Heil Hitler."

12 I have a colleague at another university, born in Germany,
13 raised in a non-Jewish family, and the war ended when she was
14 5, I think, or something like that. It was only after the war
15 ended that she was -- learned that there was -- that you said
16 "good morning" and you didn't say "Heil Hitler" when you woke
17 up and you greeted your parents.

18 Q Professor, what was the gesture that the men in that video
19 were doing with their arm?

20 A It's an outstretched -- it's an outstretched arm. You see
21 it in many documentaries of the Third Reich. There's a famous
22 documentary by Leni Riefenstahl, *Triumph of the Will*, which is
23 a documentary of a major Nazi rally, Nuremberg rally, in 1934.
24 You see people doing it passionately, to one another, but it's
25 "Hail victory," "Heil Hitler."

D. Lipstadt - Direct

1 Q Have you heard of the phrase "blood and soil," Professor?

2 A Yes. "Blut und Boden" is the German way. In fact, I
3 believe we heard it chanted, or I heard it in some the videos,
4 chanted from the Unite the Right rally.

5 And what it means is -- it has -- it's a German -- it was
6 very popular in Germany -- not solely in Germany -- before, but
7 certainly very much associated with, the Third Reich. And what
8 it was saying, essentially, is: If you are not of our blood,
9 and if you are not of our soil -- and that doesn't mean work
10 the soil, because there were many Jews in Germany who were in
11 agriculture -- but if you are not of us, from our very soil,
12 from our very blood, you are foreign to us. You are an enemy
13 to us. And if you try to pass as one of us, you're even more
14 dangerous, because we can't identify you.

15 Q Professor Lipstadt, what does the word "kike" mean?

16 A The word "kike" is equivalent to other derogatory terms
17 used for ethnic groups. It's the word used for Jews. We do
18 not know the exact origins. Linguists have different theories
19 on it. But it's an American term that became a derogatory term
20 to refer to Jews and is as unacceptable today as other
21 derogatory terms are for other groups.

22 Q Have you seen it spelled, Professor, different ways?

23 A Yes. In some of the material that was sent to me to
24 review I saw repeatedly that it was spelled "kyak," K-Y-A-K,
25 which -- it's clear it had nothing to do with kayaking. There

D. Lipstadt - Direct

1 was nothing about boating where it was spelled that way, but it
2 was clearly done and is often done in order to avoid the
3 filters that some of the social media platforms put up.
4 They'll pick up that word and they'll pull the post. They
5 won't let you post it. But if you -- "kyak," kayak is a sport,
6 so you can slip under the radar.

7 Q I'm going to -- before I say that, did you see references
8 or use of the word "kyak" -- excuse me -- "kike" in the
9 materials you reviewed?

10 A Both "kike" and "kyak."

11 Q I'm going to show you a social media post -- don't put it
12 up yet, Mr. Spalding -- that's from Defendant Christopher
13 Cantwell. It's on the social media website Minds or Wire.
14 It's from July 2017. And it's been marked for identification
15 as Plaintiffs' Exhibit 2571. And this will come in through
16 Mr. Cantwell.

17 (Plaintiffs' Exhibit 2571 marked.)

18 BY MS. KAPLAN:

19 Q Can you read that social media post?

20 A "America will never be free until the last kike is
21 strangled with the entrails of the last male Democrat."

22 So in order for America to be a free nation, the last Jew
23 must be strangled -- not just move away, but strangled -- with
24 the entrails of the last male Democrat. So, you know, I think
25 it's pretty clear that this is a war to the end and the only

D. Lipstadt - Direct

1 way to win it is to kill every, as the term used in the post,
2 kike.

3 Q I'm going to show another video of another part of a
4 speech that Mr. Ray gave at the Unite the Right rally on
5 August 12th, 2017. This will come in through Mr. Ray. It's
6 Plaintiffs' Exhibit 3234.

7 I want to show this to you in two pieces, although they're
8 short, Professor.

9 Let's start with the first piece, which is 2645 through
10 2719, Mr. Spalding.

11 (Video playing.)

12 Let's pause it right there.

13 I think we talked about this earlier, but *The Daily*
14 *Stormer* on the sign, that's *The Daily Stormer* we were talking
15 about earlier?

16 A Yes. That's right. "End Jewish control" under -- or "of
17 America."

18 Q Can you explain for the jury what Mr.-- I mean, the words
19 speak for themselves, but how what Mr. Ray was saying relate to
20 the themes we've been discussing today?

21 A You're under control of a Semitic tribe -- the Jew -- and
22 it's control of the white people -- i.e., Jews are not white,
23 and they are out to destroy you. And then the final phrase,
24 "Did Hitler do anything wrong?" And yells: "No."

25 And there's a certain irony in there, because there's both

D. Lipstadt - Direct

1 an adoption of Holocaust denial, "Holohoax," but at the same
2 time, "Did Hitler do nothing wrong?" Well, in killing those
3 six million he didn't do anything wrong.

4 Q I'm just going to play a second clip now that's 27:45 to
5 28:06.

6 (Video playing.)

7 What does "gas the kikes" mean?

8 A Well, "gas the kikes" is quite clearly a reference to the
9 Holocaust: Gas the Jews.

10 The Third Reich, together with its allies, killed
11 people -- primarily Jews, but not only Jews -- in a number of
12 ways. One way was with bullets, the Holocaust by bullets, and
13 that's the work that I mentioned earlier of Father Patrick
14 Desbois, the French Catholic priest who has been working on
15 shooting sites in eastern Europe, where there were mass
16 shootings, but often very small, so we didn't know about them;
17 300 people there, 500 people there, et cetera, et cetera. So
18 many people were killed by bullets.

19 If you're going to be murdered, it doesn't matter how, if
20 you're going to be murdered by a bullet or murdered by gas, but
21 the killing implement -- a gun can be used for many things. It
22 can be used for protection. It can be used to provide food for
23 your family. It can be used for sport. A gun has many
24 different purposes. But the Third Reich recognized that they
25 wanted to kill all these Jews and there were just too many for

D. Lipstadt - Direct

1 them to shoot, and they worried about the emotional impact --
2 not on the victims, but there are memos where they talk about
3 the emotional impact on the killers, that our men and our boys
4 will become mean because they have to stand there at the pit
5 and shoot babies and old people and whomever, and the blood and
6 the guts is spilling -- flying all over their clothing, et
7 cetera -- they sought a faster, more efficient way of killing.
8 And they devised the system of gas chambers.

9 They had used them earlier, before the war, to kill people
10 who today we might call handicapped, people who were mentally
11 disabled, who had genetic diseases. And they moved those gas
12 chambers, the workings of those gas chambers, to the death
13 camps. And they devised ways of doing it and built special
14 apparatus for killing people.

15 The reason we focus so much on the gas chambers and the
16 gassings have become the symbol is that they served no other
17 purpose. No -- there was nothing else you could do with those
18 implements except kill people quickly and efficiently and not
19 have the killers have to see -- you know, have to do the
20 shooting and see the dead victims.

21 Q We're almost at the end, Professor, but I'm now going to
22 turn to some of the symbolism that was used at Unite the Right.

23 And I want, if you would, Mr. Spalding, to pull up
24 Plaintiffs' -- Plaintiffs' Exhibit 341, which is a Discord post
25 from Defendant Nathan Damigo.

D. Lipstadt - Direct

1 I'll represent that Fashy Haircut #9734 is Mr. Damigo.

2 And I'm going to ask you about the password that he states
3 there, "stopthehate1488."

4 What is 1488?

5 (Plaintiffs' Exhibit 341 marked.)

6 A Well, the 14 Words; that we saw before. And 88 is another
7 way of sort of getting under the radar. H is the 8th letter of
8 the alphabet, so "Heil Hitler" is -- often, when people such as
9 Fashy Haircut #9734 wants to refer to Adolf Hitler, he'll refer
10 "88." It's very common.

11 Q Let's put up another Discord post, which is
12 Plaintiffs' 1057.

13 And I want to -- Mr. Spalding to focus on, actually, the
14 photograph there.

15 And if you could explain to the jury --

16 (Plaintiffs' Exhibit 1057 marked.)

17 A Yes.

18 Q Go ahead, Professor.

19 A What you see in the center there on the segment of the
20 Confederate flag is what's called the dark sun. And it's an
21 ancient Nordic symbol. It's not unique to the Third Reich, but
22 it became one of the symbols used, certainly by the SS, the
23 unit of German forces that conducted the Holocaust, or was in
24 charge of the Holocaust.

25 And at one point Himmler, who was the head of the SS and

D. Lipstadt - Direct

1 who would have -- had he survived, would have become number two
2 once Hitler died, he built a spiritual retreat for the SS; not
3 a retreat where you go and relax and go fishing, but a
4 spiritual retreat where you would be reimbued with the Nazi
5 ideology, with the need to understand that what you are doing
6 is a glorious page, to quote Himmler, "a glorious page in
7 German history never to be written." And in that castle which
8 he built for this SS retreat, in the mosaics on the floor you
9 have this symbol. So it has become a popular symbol amongst
10 white nationalists.

11 Q If I may, Professor, I apologize if you've already said
12 this, but how do you say in German "Black Sun"?

13 A "Sonnen bund."

14 Q Let's turn to the next exhibit, which is another
15 photograph. It's Plaintiffs' 2390. And this is a photograph
16 of Mr. Fields and some other gentlemen on August 12th. And I
17 want you to focus on the symbol on those black shields,
18 including the one in the middle that Mr. Fields is holding.

19 (Plaintiffs' Exhibit 2390 marked.)

20 A That is called the fasces, and it is a bundle of twigs
21 that has been bound together around an axe. It was used in
22 many places.

23 In fact, you'll even find it if you go north a little bit
24 and visit Washington, DC and you visit the Lincoln memorial.
25 You'll find it there. But there, it represents "e pluribus

D. Lipstadt - Direct

1 unum," one of the mottoes of the United States: "In many, we
2 become one." But it was then adopted also by the Italian
3 political party under Mussolini -- the Fascist Party, from
4 "fasces" -- and it became a symbol of fascism.

5 So for some people who want to avoid carrying something
6 like the swastika, this might be a good sort of secret
7 handshake. You know, people in the club know what it means.

8 Q One more, Professor. Could we put up Plaintiffs'
9 Exhibit 1979?

10 This is a photograph from Unite the Right on August 12th.
11 And I'd like you to focus on that kind of square flag at the
12 top.

13 (Plaintiffs' Exhibit 1979 marked.)

14 A It's called the Othala rune, and it's also an ancient
15 symbol, but it became very much associated with the Nazis. And
16 some of the units; of the SS, of the German army, of ethnic
17 Germans, the unit that served in Croatia and killed thousands
18 of Croats. This was a symbol.

19 So again, if you want to avoid certain symbols which we
20 immediately look at and know that that's a Nazi symbol, such as
21 the swastika, you might use something like this.

22 MS. KAPLAN: Thank you for your time, Professor. I
23 have no further questions.

24 THE WITNESS: You're welcome.

25 THE COURT: All right. Before we start the

D. Lipstadt - Cross

1 cross-examination, I think we'll take a 20-minute recess and
2 then come back.

3 **(Jury out, 2:54 p.m.)**

4 (Recess.)

5 THE COURT: Ready to call the jury?

6 MS. KAPLAN: One very quick matter that the court
7 reporter asked me to put on the record. I broke my own promise
8 and I spoke too fast, and so one exhibit that I mentioned was
9 207 was actually 2071, to clarify. Apologize.

10 **(Jury in, 3:18 p.m.)**

11 THE COURT: You may be seated.

12 Mr. Kolenich?

13 MR. KOLENICH: I have no questions of this witness.

14 THE COURT: All right.

15 MR. SPENCER: I have no questions, Your Honor.

16 MR. CANTWELL: Christopher Cantwell. I do.

17 CROSS-EXAMINATION

18 BY MR. CANTWELL:

19 Q Hello, Ms. Lipstadt. Did I say that right, Lipstadt?

20 A Lipstadt.

21 Q Can you see on your screen this social media post from me?

22 A Yes.

23 MR. CANTWELL: This is already in evidence, I
24 believe, Plaintiffs' 2571. Can we show this to the jury?

25 THE COURT: Yes.

D. Lipstadt - Cross

1 MS. KAPLAN: Just to clarify, Your Honor. I don't
2 think it was in evidence. We were showing it to -- Professor
3 Lipstadt is an expert. But the jury did see it.

4 MR. CANTWELL: They did see it. Okay. So if we
5 could put it back up in that case.

6 BY MR. CANTWELL:

7 Q This post from me dated July 15, 2017, do you want to read
8 that?

9 A "America will never be free until the last kike is
10 strangled with the entrails of the last male Democrat."

11 Q Okay. And do you understand that this quote is derived
12 from another quote?

13 A No, I don't.

14 Q Have you ever heard anything about the last aristocrat
15 being strangled with the entrails of the last priest?

16 A Yes, but I don't connect it to this.

17 Q Do you know what the origin of that quote is?

18 A No, I don't.

19 MR. CANTWELL: Okay. And I think we already showed
20 the jury Plaintiffs' 2499 as well, right?

21 MS. KAPLAN: Yes.

22 MR. CANTWELL: So I'm just going to click over to
23 that tab, if that's all right.

24 THE COURT: I think anything that Ms. Kaplan showed
25 the witness, you can assume you can use too.

D. Lipstadt - Cross

1 MR. CANTWELL: Okay.

2 BY MR. CANTWELL:

3 Q And so this was a post by Matthew Heimbach dated December
4 26, 2017. That's right in the center there. Do you see where
5 I'm referencing there?

6 A Yes, I do.

7 Q So this was a quote about the total destruction of Jewry,
8 right?

9 A Yes.

10 Q And before the letter T in the word "the," what character
11 is that before that?

12 A It's a little vague but it looks like a quotation mark.

13 Q That's a quotation mark. And what about at the end of
14 that post? At the end of that post, what is the character
15 that's at the end of the --

16 A A quotation mark.

17 Q So does that appear that Matthew Heimbach is quoting
18 somebody else?

19 A It appears Matthew Heimbach has put quotations marks
20 around a sentence that he put up.

21 Q And so in the course of your study of antisemitism did you
22 come across jokes about Jews?

23 A Yes.

24 Q And did you -- and in the course of that, did you come
25 across any jokes that were just jokes?

D. Lipstadt - Cross

1 A I don't know what that means.

2 Q You don't know what it means to make a joke about Jews?

3 A I know what it means to make a joke about Jews. I don't
4 know what you mean by "just jokes."

5 Q Well, it seems to me that the implication that you're
6 drawing is that when people in these posts that you're looking
7 at in the activities of the defendants in this case, you're
8 saying that there is some kind of intent, a desire to destroy
9 the Jewish people. And I'm just wondering if you ever come
10 across somebody who just makes an antisemitic joke from time to
11 time?

12 A They may just be making an antisemitic joke, but the fact
13 that they're making an antisemitic joke is a pretty striking
14 thing, because if you make a joke at the expense of someone,
15 whether it's a joke of someone who is handicapped, a joke of
16 someone of color, and you say oh, it's just a joke, well, it
17 may not be just a joke.

18 Q Is it your opinion as an expert that there's no such thing
19 as an innocent racist joke?

20 A I would say I'm not an expert in jokes. There are people
21 who work on that, who work on the rhetoric of jokes, etc. But
22 as an expert in antisemitism and in hate generally, I would say
23 yes, that's correct.

24 Q Okay. So there's no such thing as an innocent antisemitic
25 joke.

D. Lipstadt - Cross

1 Have you ever heard the phrase, the saying, "two Jews,
2 three opinions"?

3 A Yes.

4 Q And tell me your opinion about that saying.

5 A Jews are -- Jewish tradition is the debating tradition,
6 and you get many different opinions, and that there are
7 different opinions amongst Jews. That's a characteristic.

8 Q Is this a negative stereotype about the Jewish people?

9 A Not necessarily. Depends how it's used.

10 Q Would you say that it's -- would you say there's any truth
11 to the stereotype from what you know?

12 A No.

13 Q There's no truth to "two Jews, three opinions"?

14 A I have taught in an academic setting for 40 years, and put
15 two academics together, I'll get three opinions from them, too,
16 and they're not necessarily Jews.

17 Q Fair enough.

18 You also testified that the torches in the torchlight
19 rally from August 11th, that they were -- I don't want to --
20 rather than me try to restate what you said, tell me what your
21 opinion was of the torches.

22 A That those torches can have a benign import. You can have
23 a couple in your backyard to ward off mosquitoes or other pesky
24 bugs. But when used in a rally like that with the fire, with
25 the marching at night, they evoke something, a propaganda

D. Lipstadt - Cross

1 technique or practice that was very common in Nazi Germany.

2 Q And I think the words that you used earlier were, "for a
3 historian who studies this period, the connotation is
4 absolutely clear."

5 What about for somebody who is not a historian who studies
6 the period?

7 A I didn't say only for a historian. I said for a historian
8 who studies the period.

9 Q But for somebody who was not a historian who studied the
10 period, they might not be as aware of it?

11 A They might. They might not.

12 Q What about somebody who had read *Mein Kampf*?

13 A Not necessarily.

14 Q In your report I think you quoted Dr. Edna Friedberg, her
15 piece in The Atlantic, saying that Hitler talked about the
16 torches in *Mein Kampf*. Is that --

17 A You'd have to show me that.

18 Q Well, maybe we don't need to go into it.

19 If somebody were going to make a joke about Jewish people,
20 is there something that stands out about the Jewish people more
21 than other people in the course of history?

22 A That's a very vague question. I don't understand the
23 question.

24 Q If somebody was going to make a joke about the Jewish
25 people, would the Holocaust be an easy target?

D. Lipstadt - Cross

1 A I find it hard to imagine that using a genocide which
2 killed 6 million people, irrespective of their religion, their
3 identity, their nationality, a topic for jokes.

4 MR. CANTWELL: Okay. No further questions.

5 THE COURT: Thank you. Anyone else?

6 MR. CAMPBELL: I have two questions, Judge.

7 THE COURT: All right.

8 CROSS-EXAMINATION

9 BY MR. CAMPBELL:

10 Q Good afternoon, Dr. Lipstadt.

11 A Good afternoon.

12 Q I represent James Fields. Just a couple questions for
13 you, Doctor.

14 The jury was shown Plaintiffs' 3642, which was a Twitter
15 post by @TheNewGiantDad which included, I think you said, the
16 14 Words?

17 A Correct.

18 Q And a photograph of Hitler.

19 Ma'am, you're not here to offer any testimony as to
20 whether that had any relation to the Unite the Right rally; is
21 that correct?

22 A It was cited -- I believe it was cited at the Unite the
23 Right rally.

24 Q Yes, ma'am. But this post in April --

25 A No.

D. Lipstadt - Redirect

1 Q -- by a gentleman, you don't have any idea whether that
2 had anything to do with --

3 A I do not.

4 Q -- the planning or leading up to Unite the Right?

5 A I do not.

6 Q Just that it is an antisemitic post --

7 A Clearly an antisemitic post.

8 MR. CAMPBELL: Yes, ma'am. Thank you. I have no
9 more questions.

10 THE COURT: Is that all, then?

11 MR. JONES: No questions.

12 MS. KAPLAN: Very, very brief, Your Honor.

13 THE CLERK: No one on Zoom.

14 REDIRECT EXAMINATION

15 BY MS. KAPLAN:

16 Q Professor Lipstadt, do you remember that Mr. Cantwell just
17 asked you a bunch of questions -- not a bunch, a couple of
18 questions?

19 A Yes.

20 Q And do you recall that one of the documents he showed you
21 was Plaintiffs' Exhibit 2499. If we could put that up on the
22 screen, please.

23 A Uh-huh.

24 Q And do you recall that with respect to that quote,
25 Mr. Cantwell asked you a series of questions or a couple of

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1 questions about whether there was a quotation mark at the
2 beginning --

3 A Right, correct.

4 Q -- and at the end; do you recall that?

5 A Yes, I do.

6 Q Can you look at the quote right above it and please read
7 that into the record?

8 A "Hey, by the way, what I've got y'all here, I'm writing
9 the section of the book on Jews. Thoughts on this for a
10 closer?"

11 Q And who posted that?

12 A Matthew Heimbach.

13 MS. KAPLAN: No further questions, Your Honor.

14 THE COURT: Thank you. All right. Thank you. You
15 may be excused.

16 Who is your next witness?

17 MS. KAPLAN: So what we're going to do right now,
18 Your Honor, is put in -- make a presentation of documents from
19 Defendant Azzmador. We're going to have a little bit of a
20 switching of the guard, Your Honor, if you don't mind.

21 MR. ISAACSON: Your Honor, I will be publishing the
22 exhibits for Robert Ray. We have agreed on these exhibits with
23 the defendants. We have agreed that they may be admitted.
24 Rather than admit them one by one, I have a list of them that I
25 can give to the court reporter and the clerk so that they can

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1 be admitted as a whole to save time.

2 THE COURT: Thank you.

3 MR. ISAACSON: I will be presenting evidence,
4 documents and videos, from Defendant Robert Ray, who is absent
5 from this proceeding. And my name is Bill Isaacson.

6 Mr. Spalding?

7 The first exhibit is dated February 19th, 2017. It
8 is from the Discord server that is stated at the upper
9 left-hand corner of this document. This is Plaintiffs'
10 Exhibit 536 and it is part of the #general channel on this
11 server. It is a post from Azzmador, which is the name that
12 Robert Ray uses on Discord.

13 And there you see his post on that day.

14 The next exhibit is dated March 4th of 2017. This is
15 a direct message between Robert Ray, Azzmador, and Matthew
16 Heimbach. You will see that Azzmador sends a link. Matthew
17 Heimbach responds, and he says, "I'm gonna apologize in
18 advance. I do not feel very well, but we are getting this
19 done." The link was to Discord. That was Exhibit 581.

20 Then we have here on the next page, after he says
21 that he doesn't feel very well, we're getting this done,
22 Azzmador says -- tells him where to click. "No problem."

23 The next exhibit is Exhibit 2797. You will see that
24 Robert Ray, Azzmador, is writing in *The Daily Stormer*. This is
25 April 20th, 2017, Plaintiffs' Exhibit 2797. This article that

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1 he is writing under the name "Azzmador" is wishing "happy
2 birthday to my leader," who you see pictured there, Adolf
3 Hitler.

4 On the second page of the article, Robert Ray writes,
5 "Adolf Hitler was the greatest political leader of the 20th
6 century and most likely of all time. He was a man of vision
7 and of action. He loved his people and he came along at a time
8 when they needed him the most."

9 You will see on page 3 of this exhibit another photo
10 of Adolf Hitler with "Heil Hitler."

11 The next exhibit is Plaintiffs' Exhibit 3710. It is
12 dated May 12th, 2017. This is in the Aquilonia server on
13 Discord in the #general channel. Azzmador writes, "This is the
14 modern era, Zeiger, we prefer aluminum baseball bats now." And
15 then he talks about whacking someone's skull and the sound that
16 it will make. And you can see that on your screen.

17 The next exhibit is dated June 15, 2017. So this is
18 slightly less than two months to August 11th. This is on the
19 Latveria Discord server in the #general channel. And here you
20 can see what Azzmador, Robert Ray, posted that day. That was
21 Exhibit 393.

22 The next exhibit is 351. This is now June 29th of
23 2017 and this is a direct message between Azzmador, or Robert
24 Ray, and Andrew Anglin, another absent defendant, he of *The*
25 *Daily Stormer*. And you can see where Andrew Anglin writes,

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1 "Anyway the battle flag with a swastika in the middle would be
2 more triggering. Otherwise I'd do straight battle flag."

3 Robert Ray, Azzmador, responds, "The swastika in the middle is
4 fine by me. It might upset the neoconfederate guys not because
5 of the swastika but because they consider these flags sacred.
6 Either way is okay by me, though."

7 The next exhibit is Exhibit 502. It is on the
8 Thunderdome server of Discord, which is *The Daily Stormer*
9 server. It is dated June 29th. And there you will see that
10 Robert Ray posts: "Soon it will be doable. I want to invest
11 in race-specific bioweapons." And he makes reference to
12 something more specific.

13 The next exhibit is Plaintiffs' Exhibit 3693. It is
14 dated July 16th, 2017, less than a month to August 11th, and
15 Robert Ray is posting on the Vanguard South District server in
16 the #general channel. And he writes or posts: "Hatred
17 absolutely comes naturally to us. The Jews have spent two
18 millennia trying to purge it. Hate may be the most important
19 attribute we ever had. There is absolutely nothing wrong with
20 hate. When one lacks hate, one will not act in the interest of
21 his race and nation. It is natural and good that one hates
22 one's enemy."

23 The next exhibit is also dated July 16 of 2017. It
24 is Exhibit 3705. It is also in the Vanguard South District
25 Discord server in the #general channel, where Robert Ray

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1 writes: "When you go to war, you should always behave like
2 beasts, killing machines. There is no place for codes and
3 treaties and 'fair treatment.' War means the death of your
4 enemy, the destruction of his ability to ever challenge you
5 again, the erasure of his name and legacy from history.
6 Anything less is not victory."

7 The next exhibit is Exhibit 445 and is July 17, 2017,
8 again on the Vanguard South District server on the #general
9 channel. Azzmador writes to someone named RCO Nick-TX: "We've
10 been doing a background check via several methods and then
11 vetting in person." He continues: "The Discord thing is
12 serious business, though. There's a lot of crossover between
13 these groups, and the servers all have to be airtight, and you
14 can't be letting people in there until they're at least vetted
15 to prospect level."

16 The next exhibit is 363. This is a direct message on
17 July 18th, 2017. This is -- Azzmador writes on that day:
18 "There are 2,000 Antifa coming. You gonna represent?" And he
19 continues: "I'll be there gassing these people. All that shit
20 is an excuse. You're never gonna find an event that only has
21 people you like at it. This is a war, not a party."

22 The next exhibit is dated July 18th, 2017. It is
23 Plaintiffs' Exhibit 396. It is in the Latveria Discord server
24 in the #general channel, where Azzmador writes: "Apparently
25 one of the divisions going to the rally will be sporting

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1 shields." He continues: "Good idea, but me personally, I
2 don't do shields and helmets. I think being bareheaded and
3 barehanded as a prominent figure is a good look. No fear,
4 etc."

5 The next exhibit is 3700, dated July 19th, 2017.
6 It's in the Vanguard South District server in the #general
7 channel. Robert Ray writes: "There was no program to kill
8 Jews. They were forced to work for a few years and now we'll
9 never hear the end of it. In many cases the Jews in the camps
10 fared far better than the German populations in the neighboring
11 towns."

12 The next exhibit is Exhibit 976. It is dated
13 July 21st, 2019. Now we are in the Charlottesville 2.0 Discord
14 server in the #general channel. Robert Ray writes: "Thus far,
15 I'm batting 1000. No Antifa or oathcucker has been able to
16 withstand me and my bully squad at any event."

17 The next exhibit is Exhibit 979, dated July 22nd,
18 2017. It is in the Charlottesville 1.0 server in the
19 #general_1 channel. A poster named Ignis Faatus says: "So I'm
20 thinking about renting a woodchipper from Home Depot for the
21 event." Robert Ray responds: "Portable ovens are where it's
22 at."

23 The next Exhibit is dated July 23rd, 2017. It is
24 Exhibit 1109. It is in the Charlottesville 2.0 server in the
25 channel called #safety_planning. Someone named McCarthy says:

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1 "Hey Azzmador, is there a single point of contact for all the
2 Stormer guys regarding security planning?" Azzmador responds:
3 "No." Tyrone, who has been identified as Michael Chesny in
4 this case, also responds: "Stormer book clubs are highly
5 decentralized by design. Even at the local level they are a
6 loose association of individuals. A few small groups here or
7 there may be mobilized, but any actions for them might as well
8 be addressed to the event at large." McCarthy says: "All
9 right. Well, if the Stormer guys are bringing shields and want
10 to hold a perimeter, have them get in contact with Heinz."

11 The next exhibit is dated July 23rd, 2017. It is in
12 the Charlottesville 2.0 server in a channel titled
13 #antifa_watch. It is Exhibit 1184. Azzmador writes to someone
14 named Whiskey Sierra: "If the police get stand down orders and
15 our whole mob shows up and Antifa is occupying the park there
16 is going to be an all out brawl. Good. Bring it on." Tyrone,
17 Michael Chesny, says: "What if we are sociopathic and want
18 them to show up, for... self-defense purposes?"

19 The next exhibit is a direct message. It is
20 Exhibit 348. It is dated July 23rd, 2017. It is once more
21 with RCO Nick. Robert Ray says: "The last step is Kessler
22 himself. DS" -- *Daily Stormer* -- "guys were giving him shit
23 over not having any Daily Stormer speakers at the event. So he
24 contacted me last night and we're supposed to talk this
25 afternoon about me speaking." He continues: "And the last

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1 thing he wants, if he's smart, is to have the 1488ers less than
2 enthusiastic."

3 The next exhibit, Exhibit 349, is dated July 23rd,
4 2017. It is again a direct message with RCO Nick. Robert Ray
5 writes: "I'm a white supremacist. Apparently that's the term
6 you have to use to be clear with these idiots." RCO Nick
7 responds: "Yeah, I say WN" -- which we believe is white
8 nationalist -- "because you can't confuse that." Robert Ray
9 writes: "Yeah, but even WN confuses people because they think
10 that means you'll settle for a little sliver of the USA as a
11 white reservation."

12 The next exhibit is Exhibit 426, dated July 23rd.
13 This is a post by Robert Ray, Azzmador, on a server called Bowl
14 Patrol.

15 The next exhibit is dated July 23rd, 2017. It is
16 Exhibit 448. It is in the Vanguard South District server in
17 the #general channel. Robert Ray writes: "Listen to me very
18 carefully. Not a single Jew was gassed."

19 The next exhibit is also dated July 23rd, 2017. It
20 is in the Charlottesville 2.0. It is in the channel
21 #questions_for_coordinators where someone named
22 Stannisthemannis says: "I'm conceal carrying. I mean, I don't
23 go to the grocery store unarmed let alone this LOL. But that's
24 for extremely last resort. I have other less lethal
25 alternatives like a fire extinguisher, mainly in case we face

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1 Molotovs." Robert Ray writes: "Well, I always come barehanded
2 and bareheaded, because officers don't duck LOL. But my guys
3 will be ready with lots of nifty equipment."

4 The next exhibit is 3766, dated July 25th, 2017, and
5 it has this picture on page 2, which someone named Vic Macken
6 has sent to Robert Ray, and to which he responds: "Ha ha."

7 The next exhibit is Exhibit 542. It is dated
8 July 27, 2017. Robert Ray writes in the server that is
9 identified up above in the #charlottesville-contact channel.

10 He says: "Myself and some of the other Daily Stormer guys are
11 gonna be out front with a big bully squad hogging all the
12 attention and gassing all the kikes."

13 The next exhibit is dated July 28th, 2017. It is in
14 the Thunderdome server, *The Daily Stormer* server, in the
15 #events channel. Robert Ray writes: "I just got done with an
16 hours-long chat with some of the event organizers and I feel
17 better about the thing. The plan is the same: Gas the kikes,
18 PR war now, plenty of trolling and lulz."

19 The next exhibit is Exhibit 399, July 30th, 2017, in
20 the Latveria server in the #general channel. Someone named Lee
21 writes to Azzmador: "Just as an FYI, I've got my travel booked
22 to Virginia. Let me know when you've got logistics planned out
23 for the event." Azzmador, Robert Ray, responds: "Will do.
24 It's going along quite well actually. My DFW" -- which we
25 believe is Dallas/Fort Worth -- "SBC" -- *Stormer* Book Club --

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1 "guys are making shields, as are Vanguard and several others.
2 We already have several people bringing megaphones. I have a
3 rough sketch of how we'll form up, and of course I'm bringing
4 the banner. We'll have some guys hold that and we'll stand in
5 front of it."

6 The next exhibit is dated July 31st, 2017. It is
7 Plaintiffs' Exhibit 375. This is in the Azzmador server in his
8 #general channel. He posts a link to Operational Security for
9 Right Wing Rallies, and he says: "Everyone go to your local
10 Dollar Store or Walmart and get cheap tiki torches for the
11 Charlottesville event. There will be a torch march."

12 The next exhibit is now dated August 1st, 2017. It
13 is Exhibit 3760. It is in the Thunderdome server of *The Daily*
14 *Stormer* in the #events channel. Robert Ray writes: "Wear a
15 Daily Stormer tee if you have one, a dark plain tee if you
16 don't. Jeans or cargo pants. New Balances or boots. No
17 military attire other than boots if you like, etc." Someone
18 posting under the name khaos156 says: "I might show up with
19 Vanguard America wearing a Daily Stormer tee." Robert Ray
20 responds: "If you're a member of Vanguard, dress like them."
21 And khaos responds: "Yep, I will personally."

22 The next exhibit is August 2nd, 2017, again in the
23 Thunderdome server in the #events channel. Azzmador writes he
24 wants to gas two groups -- excuse me. He says: "Gas the dune
25 monkeys." And then he says: "Gas the N word too."

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1 The next exhibit is August 3rd, 2017. It's in the
2 Latveria Discord server in the #general channel. Robert Ray
3 writes: "Yeah, it's a hardcore banner. When it arrived and I
4 unrolled it, it had visions of pogroms and gas chambers, LOL."
5 He continues, in all capital letters: "END JEWISH INFLUENCE IN
6 AMERICA." He says: "Beautiful man." Lee says: "I think it
7 says END JEWISH CONTROL OF AMERICA." Robert Ray responds:
8 "Yeah, maybe so. It's in the container."

9 August 3rd, 2017, Plaintiffs' Exhibit 449. We are
10 again in the Vanguard South District server in the #general
11 channel. Someone named SonderSchutz says: "Ah, Antifa is
12 fucked now."

13 Azzmador responds: "I'm looking forward to BLM more
14 than Antifa. Blacks are the easiest people on earth to
15 trigger. I predict some gloriously hilarious chimping."

16 Also on August 3rd, Plaintiffs' 450, also in the
17 Vanguard South server and in the #general channel, someone
18 posting under Hyperborean Vanguard posts this picture of
19 Vanguard helmets, and Robert Ray responds: "You can get cheap
20 motorcycle helmets on Amazon that offer better protection and
21 look a lot cooler."

22 The next exhibit, also dated August 3rd, 2017,
23 Plaintiffs' Exhibit 5112. It is in the Thunderdome server of
24 *The Daily Stormer* in the #events channel. Someone named Pat
25 says: "Hate things that are worthy of hate, and the Jews and

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1 the antiwhite movement deserve a whole lot of hate." And
2 Robert Ray responds: "Yeah, hate and gas."

3 August 6, 2017, Plaintiffs' Exhibit 356. This is a
4 direct message with Robert Ray and Thomas Commander, who has
5 been identified as Thomas Rousseau of Vanguard. There you will
6 see the rally poster saying: "Unite the Right. Join Azzmador
7 and *The Daily Stormer* to end Jewish influence in America."

8 The next exhibit, August 7th, 2017, Plaintiffs'
9 Exhibit 367. This is in the Azzmador server in the
10 #announcements channel. Robert Ray writes: "I need everyone
11 to get together, and by Tuesday night I need you guys to have
12 picked two officers, which for the time being will be known as
13 Storm leaders, from Stormers who are going to Charlottesville.
14 This is a temporary position. You are not electing Stormer
15 Book Club officers. It's just for the event. I also need at
16 least two bodyguards, as the event planners said each VIP --
17 LOL, that just means a person speaking -- needs a security
18 detail. I have already asked" -- and then there is a handle
19 there -- "to be the head of my security detail. So one or two
20 volunteers to work with him will be fine. Note: One person
21 can be both security and a Storm leader. The two positions
22 need not be mutually exclusive."

23 He continues: "This is to ensure we will have order
24 and leadership with an agreed-upon hierarchy with the authority
25 to command our guys and make sure the group functions as a

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1 unit, with no stragglers and no cowboys leaving the group for
2 one-on-one fights."

3 August 7, 2017, Plaintiffs' Exhibit 358. Again,
4 these are direct messages with Robert Ray. "I got to get to
5 work now," he says. "Professional racism takes no breaks."
6 And then there's a winking smiley face. White Trash says:
7 "Make it glorious, my friend. I'll bring at least eight
8 shields." Robert Ray responds: "Okay. Great."

9 August 7th, 2017, Exhibit 408. The Latveria server
10 in the #general channel, to Andrew Anglin of *The Daily Stormer*,
11 Robert Ray writes: "I'm writing a Charlottesville story now.
12 I've been in chats all evening getting everything coordinated
13 to get our guys supplied, updated, and secured with a ride to
14 the event and then another logistics chat with the organizers.
15 This shit is incredibly complex. In the last three days I must
16 have spent 50 hours networking and planning with various groups
17 within and without the organization."

18 He also posted on August 7th, 2017, on the Latveria
19 server in the #general channel, this meme.

20 On August 8th -- that was Plaintiffs' Exhibit 409.

21 Plaintiffs' Exhibit 410 is on August 8th. It's the
22 Latveria server in the #general channel. Azzmador writes:
23 "Yeah, our guys need to get a grip on the fact that they're
24 probably going have to physically fight these people. A lot of
25 this wanting guns and such is driven by their belief that if

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1 someone tries to attack them they can point a gun and it's
2 over. That's far from true."

3 Also on August 8th, Plaintiffs' Exhibit 412. This is
4 the Latveria server in the #general channel. Azzmador writes:
5 "I guess I should put an update at THEW that says we're going
6 whether they give us the permit back or not."

7 Plaintiffs' Exhibit 413, also dated August 8th. The
8 Latveria server in the #general channel. Robert Ray writes:
9 "I posed this question to one of these cucked militia idiots
10 who posted a video saying they were gonna be there to prevent
11 violence. I asked, how do you retards propose to prevent
12 violence by shooting people? No reply thus far." Andrew
13 Anglin responds: "Yeah, you prevent violence by having big
14 guys, juiced or not, who are trained to fight." Robert Ray
15 responds: "We have those aplenty."

16 Also on August 8th. This is the Latveria server in
17 the #general channel. Azzmador says: "My guys have built the
18 best, strongest shields you ever saw." Andrew Anglin says:
19 "What you want are big guys ready to choke someone out in seven
20 seconds."

21 There are pictures of the shields on the following
22 pages.

23 Also on August 8th, 2017, in the Vanguard server in
24 the #general channel, Azzmador posts a link: "Charlottesville,
25 we are still going. Why you must attend and what to bring and

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1 not to bring." And Ronny TX posts this mockup picture of
2 Mr. Heimbach.

3 Plaintiffs' Exhibit 415, August 8th, the Latveria
4 server in the #general channel. Azzmador says: "The only
5 thing I'm gonna have is pepper spray and my commie-whacking
6 cane, LOL." He says: "The laws on the pepper spray are it's
7 fine if you spray an attacker, but you get charged if you hit
8 the wrong person. That's why I told the readers to only get a
9 particular brand of pepper gel I use. It's almost impossible
10 to hit the wrong person with it."

11 August 8th, Exhibit 518, the Thunderdome server of
12 *The Daily Stormer* in the #events channel. Robert Ray writes:
13 "If you want to be armed, bring a shield, a flag on a flagpole,
14 and OC pepper gel."

15 On August 9th on the Azzmador server in the #general
16 channel, Azzmador writes to @everyone: "I couldn't possibly be
17 more proud of you guys or happier with the way these shields
18 turned out. I will be both elated and humbled to stand with
19 you men and address the media and fight the hordes of filth and
20 scum." And then he writes, in all capital letters: "THIS IS
21 OUR DAY. CHARLOTTESVILLE WILL BE OURS. TEXAS WILL BE OURS.
22 THE WORLD WILL BE OURS," above the picture of Adolf Hitler.

23 On August 9th, Plaintiffs' Exhibit 419. In the
24 Latveria server in the #general channel, Robert Ray says:
25 "Check this out. My boys have been hard at it," with this

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1 picture of shields.

2 Also on August 9th, Plaintiffs' Exhibit 420. In the
3 Latveria server on the #general channel, Robert Ray writes: "I
4 think it's an awesome visual, and if there's a confrontation I
5 can say the word and these boys will form a phalanx and crash
6 into those fucks in a manner they'll never forget."

7 August 11, Plaintiffs' Exhibit 424, the Latveria
8 server, the #general channel, Robert Ray posts this picture.

9 The next exhibit is Plaintiffs' Exhibit 3244.

10 (Video playing.)

11 The next exhibit is from August 11, 2017. It is
12 Plaintiffs' Exhibit 2738. It is a picture of Robert Ray.

13 Also on August 11th, 2017 is Plaintiffs'
14 Exhibit 2805, a picture of Robert Ray.

15 Another picture from August 11, Plaintiffs'
16 Exhibit 2810.

17 Another picture, after the events we just saw on
18 August 11th, Robert Ray, Plaintiffs' Exhibit 2761.

19 Plaintiffs' Exhibit 3234 is a livestream by Robert
20 Ray on August 12. It is clips from the livestream.

21 (Video playing.)

22 The next clip is at Emancipation Park that day.

23 (Video playing.)

24 The next exhibit is 2112, also at Emancipation Park
25 on August 12th.

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1 (Video playing.)

2 His last words there, which were cut off, were, "it's
3 humor, but we mean it."

4 Plaintiffs' Exhibit 1991 is Robert Ray talking to a
5 media outlet called Vice on August 12th.

6 (Video playing.)

7 The final exhibit, an excerpt was shown earlier this
8 afternoon. This is the full speech of Azzmador reading a
9 speech by Andrew Anglin at an after-party on August 12th. This
10 is Plaintiffs' Exhibit 2071.

11 (Video playing.)

12 MR. ISAACSON: That concludes our presentation, Your
13 Honor, of the Ray evidence.

14 (Plaintiffs' Exhibits 2071, 3234, 536, 581, 2797,
15 3710, 393, 351, 502, 3693, 3705, 445, 363, 396, 3700, 976, 979,
16 1109, 1184, 348, 349, 426, 448, 1128, 3766, 542, 506, 399, 375,
17 3760, 3708, 403, 449, 450, 512, 356, 367, 358, 408, 409, 410,
18 412, 413, 414, 452, 415, 518, 376, 419, 420, 424, 3244, 2738,
19 2805, 2810, 2761, 3234, 2112, 1991, 2071 marked and admitted.)

20 THE COURT: All right.

21 MS. KAPLAN: Next, Your Honor, we're going to play
22 the videotaped deposition of Defendant Kline, also known as
23 Mosley.

24 MR. ISAACSON: Elliot Kline.
25

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1 (Video deposition of ELLIOT KLINE played.)

2

3 THE COURT: All right. Let's stop there and resume
4 tomorrow morning.

5 All right. How much longer do we have on this? I'm
6 not going to do it tonight, but just give me an estimate as to
7 how much more is left.

8 MS. DUNN: 20 minutes, Your Honor.

9 THE COURT: We'll resume tomorrow morning.

10 Ladies and gentlemen of the jury, you'll be released
11 now, and I'll see you in the morning, again at 9 o'clock.

12 Of course, do not discuss the case with anyone or
13 allow anyone to discuss it with you or remain within hearing of
14 anyone discussing it.

15 I'll ask the lawyers to stay just a second after the
16 jury has gone.

17 **(Jury out, 4:56 p.m.)**

18 THE COURT: I believe this is one of the depositions
19 that Mr. Cantwell objected to. So I need to give that limiting
20 instruction regarding this deposition.

21 MR. CANTWELL: Thanks, Judge.

22 MS. KAPLAN: We agree, Your Honor.

23 THE COURT: We'll do that in the morning, then.

24 MR. ISAACSON: And, Your Honor, I'll hand up the
25 written list of the exhibits from the Ray presentation.

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1 (Proceedings adjourned, 4:57 p.m.)

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C E R T I F I C A T E

I, Lisa M. Blair, RMR/CRR, Official Court Reporter for the United States District Court for the Western District of Virginia, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/s/ Lisa M. Blair

Date: November 3, 2021